OFAVAS
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IV

SUPREME COURT OF ONTARIO

DIVISIONAL COURT

Saunders, O'Brien and Fitzpatrick JJ.

IN THE MATTER OF the Theatres Act, R.S.O. 1980, c. 498, as amended S.O. 1984, c. 56 AND IN THE MATTER OF the Judicial Review Procedure Act, R.S.O. 1980, c. 224; AND IN THE MATTER OF the Constitution Act, 1981, (Canada); AND IN THE MATTER OF the Constitutional Questions Act, R.S.O. 1980, c. 86; AND IN THE MATTER OF a certain application to the Ontario Film Review Board appointed under the Theatres Act; B E T W E E N: ONTARIO FILM AND VIDEO APPRECIATION SOCIETY Applicant/ Appellant -and- ONTARIO FILM REVIEW BOARD and THE MOTION PICTURE THEATRES ASSOCIATION OF ONTARIO Respondents -and- CANADIAN CIVIL LIBERTIES ASSOCIATION Intervenor	C. M. Campbell and Mrs. E. Murray for the Ontario Film and Video Appreciation Society J. Polika, Q.C. and S. Mason for the Ontario Film Board and for the Attorney General of Ontario R. J. Rolls, Q.C. and M. S. Hayes for the Motion Picture Theatres Association of Ontario R. J. Sharpe for Canadian Civil Liberties Association Heard: September 15, 16, 17, 18 and 19, 1986

SAUNDERS J.:

The matters before us arise from a decision of the Ontario Film Review Board (the "Board") refusing to approve for exhibition a film entitled "Amerika" unless certain cuts were made. The proposed exhibitor, Ontario Film and Video Appreciation Society ("OFAVAS") seeks judicial review of the power of the Board to make the decision. It also appeals from the decision pursuant to s. 35(8) of the Theatres Act, R.S.O. 1980, c. 498 as amended by the Theatres Amendment Act, 1984, S.O. 1984, c. 56 (the "Act").

The Approval Process

The process for obtaining approval for the exhibition of films in Ontario relevant to these matters is set out in the Act and in the regulations made under it. They may be summarized as follows:

1. Before the exhibition or distribution of a film, an application shall be made to the Board for approval and for classification (s. 35(1)).
2. In exercising its authority to approve or classify, the Board shall consider the film in its entirety and take into account the general character and integrity of the film (S. 21(1) of Ontario Regulation 931 (R.R.O. 1980) as amended by Ontario Regulation 56/85 (the "Regulations")).

3. After viewing a film, the Board, in accordance with the criteria prescribed by the Regulations, may refuse to approve the film for exhibition or distribution. (s. 35(3))

4. The Regulations provide that approval may be refused where a film contains specific types of depictions or scenes including explicit depiction of sexual activity and a scene where there is undue emphasis on human genital organs (s. 21(2)(e) and (g) of the Regulations).

5. The power to refuse is subject to subsection 21(3) of the Regulations which provides as follows:

> (3) In this section, "sexual activity" means acts, whether real or simulated, of intercourse or masturbation, and includes the depiction of genital, anal or oral-genital connection between human beings or human beings and animals, and anal or genital connection between human beings by means of objects.

6. The person submitting the film may appeal a decision of the Board by submitting the film for reconsideration by a panel of the Board and that panel, after viewing the film, shall make a decision on its approval and classification. (s. 35(5))

7. A person who has appealed may further appeal the Board's decision as to approval to the Divisional Court in accordance with the rules of court. (s. 35(8))

Section 35 of the Act and s. 21 of the Regulations are set out in Appendix "A" to these reasons.

The Board Review of the Film "Amerika" and Subsequent Proceedings

On February 14, 1985, OFAVAS delivered the film "Amerika" to the Board for approval to exhibit and distribute. On February 18th, the Board refused approval unless certain specific eliminations were made. On March 20th, OFAVAS appealed that decision by letter in which was enclosed analyses of the film and other supplementary material. On March 28th, a new panel refused to approve the film because it found that it contained graphic explicit fellatio, graphic explicit penetration and graphic masturbation.

On April 25, 1985, OFAVAS applied for judicial review to quash the decisions of the Board and to have certain sections of the Act declared null and void on the basis that they were not within the competence of the provincial legislature and were contrary to the Canadian Charter of Rights and Freedoms.

On March 21, 1986, OFAVAS, pursuant to s. 35(8) of the Act, appealed the decision of the Board dated March 28, 1985. The grounds of the appeal were substantially the same as in the application for judicial review, namely that the legislation was ultra vires the Province and contrary to the Charter. In addi-

tion, OFAVAS claimed in the appeal that the Board had erred in fact and law in holding that the film "contravened" the Regulations.

Appeal to Divisional Court

The appeal and the application for judicial review were argued together before us. There were three principal issues:

(1) the competence of a province to enact legislation requiring approval of films for exhibition (the "Provincial Powers Issue");

(2) the effect of s. 2(b) of the Charter providing for freedom of expression on provincial legislation requiring approval of films prior to exhibition (the "Charter Issue); and

(3) the validity of the decision of the Board not to approve the film having regard to the Act and Regulations (the "Appeal Issue").

The first two issues applied to both the judicial review application and to the appeal. The third issue applied to the appeal alone. For reasons that will become apparent, I propose to first deal with the Appeal Issue.

An appeal to this court from a decision of the Board was introduced in the 1984 amendments to the Act. The powers of the court are set out in s. 35(9) as follows:

> (9) An appeal under subsection (8) may be made on question [sic.] of law or fact or both and the Court may affirm or may rescind the decision of the Board and may direct the Board to take any action that the Board may take and as the Court considers proper.

So far as we are aware, this is the first appeal pursuant to s. 35(8) to come before this court. It is appropriate to consider the approach to be taken to this unfamiliar proceeding.

The Board is an administrative tribunal. At present, it consists of twenty-five members appointed by the Lieutenant Governor in Council. When a film is submitted for approval, it must be viewed by at least three members. If there is an appeal, it must reviewed by at least five different members. In the fiscal year 1985-86, the Board viewed 2379 films and videos, and did not approve 149 of them. In addition, the Board reviewed 806 rock videos and 387 trailers. There is no requirement that an applicant submit more than the film to the Board, although in this case there was some supplementary material. There is no requirement on the Board to hold a hearing and it would appear that it is not its policy to discuss a film with an applicant. There is no evidence of any discussion in this case. The two page summary report form of the Board contains a space for reasons but none were given here beyond setting out the scenes and depictions that fell into the criteria set out in section

21(2) of the Regulations. It would be of assistance to this court on an appeal if reasons for the refusal of approval were required to be given.

Mr. Polika, as counsel for the Board and for the Attorney General, submitted that the purposes of the legislation requiring prior approval of films are to preserve local standards of morality and to prevent crime. No other purpose was suggested and we may take it that if the legislation is valid, the Board must perform its function as required by the Regulations with those purposes in mind. The Board is not passing on the artistic, political, philosophical or social merit of the work, but it is obliged to take into account its general character and integrity.

In this case, faced with the film as the only substantial piece of evidence, and no reasons from the Board as to why it exercised its power of refusal, the task of this court is not an easy one. I would go further, it is a novel function for the judiciary to be required to perform. We have become, in effect, a new panel of the Board. Like the Board, we are required to view a film in its entirety and to apply the Regulations for the purpose of preserving local standards of morality and the prevention of crime. It is unusual for this, or any other, court to perform an appellate function when there have been no submissions or dialogue before the tribunal below and no reasons have been given. In dealing with cases under this section, it seems to me

that we should give considerable recognition to the qualifications and experience of the members of the Board. In the course of a year, each member must view many films. In an appeal under s. 35(8), we should, in my view, only interfere with a decision of the Board if we consider that it has failed to perform its function under the Act and Regulations or has made an unreasonable decision for which there is no basis.

The Film "Amerika"

The film runs for approximately two and one-half hours. It was accompanied by highly technical written material. The Board found that it contained explicit depictions of sexual activity within the meaning of the Regulations. There is no doubt that such was the case. There were, in addition, other scenes not referred to by the Board which would come within s. 21(2) of the Regulation. The scenes were intermittent and of short duration. Taking them all together, they lasted less than a minute. The accompanying material indicates that other scenes were intended to have sexual implications but they were not explicit depictions of sexual activity. While I would not attempt to expound on the object of the film, the impugned scenes were not inconsistent with the part of the film in which they occurred. I think it would be fair to say that the author of the film would consider their deletion as impairing the integrity and character of the film. More importantly, I do not consider that the viewing of the film could have any possibility of affecting local

standards of sexual morality or increasing the likelihood of crime. No one would view this film because of an interest in the depiction of explicit sexual activity.

While bearing in mind the consideration due to the qualification and experience of the Board, it is an inescapable inference that in this case the Board failed to take into account the general character and integrity of the film as it was required to do under the Regulations. In failing to do so, it made, in my opinion, an unreasonable decision. Accordingly, the decision of the Board is rescinded and the application is remitted to the Board with the direction that the film be approved and classified as "Restricted". OFAVAS does not dispute that classification.

The Provincial Powers Issue and the Charter Issue

As OFAVAS has been successful in its appeal, there is no necessity to consider the two other issues. We were urged to do so by counsel for OFAVAS and for both intervenors. Generally, a court will not decide issues unless it is necessary to deal with the case before it, particularly if they are constitutional issues. A recent example of this practice can be seen in the case of Kirkpatrick v. The District of Maple Ridge, decided by the Supreme Court of Canada on September 16, 1986.

We were asked to depart from the general practice in this case for three reasons. First, the application for judicial review in which there were two intervenors (one of whom was a party) was before the court. Where, as here, there is a right of appeal, it is a recognized principle that this court will not grant the extraordinary remedies asked for in judicial review applications unless there are exceptional circumstances (see for example Deenen v. The Ontario Association of Landscape Architects, unreported decision of the Divisional Court, released April 9, 1986).

Second, it was submitted that if we accept the argument of the applicant and the intervenors on the Charter issue, there will have been an infringement or denial of freedom of expression which would entitle this court, on application, to grant such remedy as is considered appropriate and just in the circumstances (Charter - s. 24). As the result of allowing the appeal is, in effect, to permit the film to be shown without any eliminations, it is difficult to imagine what other remedy, except possibly costs, that would be appropriate and just in the circumstances. None was suggested. One of the intervenors submitted that there might be persons not before the court who might be entitled to remedies consequential on a finding against the Province on either or both of the Provincial Powers or Charter issues. Even if that were so, I fail to see why that should impel us to deal with issues that do not have to be decided in this case.

Third, because of the importance of both issues, it was submitted that we should exercise our discretion and decide them at this time.

All these submissions come down to one issue. Should we, in all the circumstances, depart from the general practice. There are many decisions supporting the practice. We were referred to five cases in which constitutional issues, which did not have to be decided, were dealt with by a court: Law Society of Upper Canada v. Skapinker (1984), 9 D.L.R. (4th) 161 (S.C.C.); Re Howard and Presiding Officer of Inmate Disciplinary Court of Stony Mountain Institution (1985), 19 D.L.R. (4th) 502 (F.C.A.); Re Marshall and the Queen (1984), 13 C.C.C. (3d) 73 (O.H.C.J.); Switzman v. Elbling, [1957] S.C.R. 285 (S.C.C.); and Vic Restaurant Inc. v. City of Montreal (1958), 17 D.L.R. (2d) 81 (S.C.C.). Each case depended on its own particular facts. Three were decisions of the Supreme Court of Canada as the court of final resort.

The extent of the power of a province to impose prior restraint on the exhibition of films is an important issue of general interest. Both the Provincial Powers issue and the Charter issue were well and fully argued before us. However, any decision on those issues made by us would be obiter and not binding on any court. The issues are almost certainly going to

come before a court that will have to decide them to determine the matter before it. I can see no useful purpose in providing that court with our views on issues we do not have to decide.

Costs

The matter of costs was not dealt with at the hearing. We would suggest that counsel forward and exchange written submissions on costs within two weeks of the release of this judgment. If it becomes necessary to have oral argument, the panel may have to be reconvened.

Released: November 10, 1986

APPENDIX "A"

Section 35 of the Theatres Act

APPROVAL OF FILMS AND ADVERTISING

35.--(1) Before the exhibition or distribution in Ontario of a film, an application for approval to exhibit or distribute and for classification of the film shall be made to the Board.

(2) After viewing a film, the Board, in accordance with the criteria prescribed by the regulations, may refuse to approve the film for exhibition or distribution in Ontario.

(3) The Board, having regard to the criteria prescribed by the regulations, may make an approval conditional upon the film being exhibited in designated locations and on specified dates only.

(4) Except as otherwise provided, for the purpose of exercising a power under clause 3(5)(a) or (d), three members of the Board constitute a quorum.

(5) Where a film has been submitted for approval and classification under subsection (1), the person submitting the film, on payment of the prescribed fee, may appeal the Board's decision by submitting the film for reconsideration by a panel of the Board and that panel, after viewing the film, shall make a decision on its approval and classification.

(6) A decision by a panel of the Board under subsection (5) as to classification is final.

(7) The panel referred to in subsection (5) shall be composed of at least five members, none of whom had participated in a previous decision on the film.

(8) A person who has appealed under subsection (5) may appeal the Board's decision as to approval to the Divisional Court in accordance with the rules of court and, where there is an appeal, the Minister is entitled to be heard.

(9) An appeal under subsection (8) may be made on question of law or fact or both and the Court may affirm or may rescind the decision of the Board and may direct the Board to take any action that the Board may take and as the Court considers proper.

Section 21 of the Regulations

21.--(1) In exercising its authority under sections 3 and 35 of the Act, the Board shall consider the film in its entirety and take into account the general character and integrity of the film.

(2) After viewing a film, the Board may refuse to approve a film for exhibition or distribution in Ontario where the film contains,

(a) a graphic or prolonged scene of violence, torture, crime, cruelty, horror or human degradation;

(b) the depiction of the physical abuse or humiliation of human beings for purposes of sexual gratification or as pleasing to the victim;

(c) a scene where a person who is or is intended to represent a person under the age of sixteen years appears,

(i) nude or partially nude in a sexually suggestive context, or

(ii) in a scene of explicit sexual activity;

(d) the explicit and gratuitous depiction of urination, defecation or vomiting;

(e) the explicit depiction of sexual activity;

(f) a scene depicting indignities to the human body in an explicit manner;

(g) a scene where there is undue emphasis on human genital organs; or

(h) a scene where an animal has been abused in the making of the film.

(3) In this section, "sexual activity" means acts, whether real or simulated, of intercourse or masturbation, and includes the depiction of genital, anal or oral-genital connection between human beings or human beings and animals, and anal or genital connection between human beings by means of objects.

SUPREME COURT OF ONTARIO

DIVISIONAL COURT

Saunders, O'Brien and Fitzpatrick JJ.

IN THE MATTER OF the Theatres Act, R.S.O. 1980, c. 498, as amended S.O. 1984, c. 56

AND IN THE MATTER OF the Judicial Review Procedure Act, R.S.O. 1980, c. 224;

AND IN THE MATTER OF the Constitution Act, 1981, (Canada);

AND IN THE MATTER OF the Constitutional Questions Act, R.S.O. 1980, c. 86;

AND IN THE MATTER OF a certain application to the Ontario Film Review Board appointed under the Theatres Act;

B E T W E E N:

ONTARIO FILM AND VIDEO APPRECIATION SOCIETY

Applicant/Appellant

-and-

ONTARIO FILM REVIEW BOARD and THE MOTION PICTURE THEATRES ASSOCIATION OF ONTARIO

Respondents

-and-

CANADIAN CIVIL LIBERTIES ASSOCIATION

Intervenor

REASONS FOR JUDGMENT

SAUNDERS J.

Released: November 10, 1986

A

TRIAL Book

OF AVAS

or film Amerika

through Div Court

PostFax
MONTREAL, H1J 2K9
CR213

Book of Court Documents

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C.	Judicial Review Factum
D.	Judicial Review Record, Including 1. Notice of Application for Judicial Review (23 April 1985) 2. Affidavit of David Poole, sworn 23 April 1985; exhibits include history of case at Board. 3. Solicitor's Certificate
E.	Juridial Review Supplementary Record 1. Freedman Affidavit, in support of our application for judicial review, sworn 15 August 1986. 2. Armatage Affidavit, in support of our application for Judicial review, sworn 29 August 1986. 3. Wood Affidavit, in support of our application for Judicial Review, sworn 2 September 1986.

F. Applicant's Factum

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H. C.C.L.A. Intervenor Application and Factum, including
1. Notice of Motion, dated 27 March 1986
2. Borovoy affidavit (no exhibits), sworn 27 March 1986
3. Applicant's Factum re: becoming intervenor
4. Intervenor's Factum re: merits

I AFF. OF ELAINE GUGINS, AUG. 26, 1986.

J. RESPONDENT'S FACTUM

K. MOTION PICTURES THEATRES ASSOC.

B

FILE NO. 409/85

SUPREME COURT OF ONTARIO

RECEIVED
SEP 31 1985

B E T W E E N :

ONTARIO FILM AND VIDEO
APPRECIATION SOCIETY,

Applicant,

- and -

ONTARIO FILM REVIEW BOARD,

Respondent.

NOTICE OF LISTING FOR HEARING

THIS APPLICATION FOR JUDICIAL REVIEW HAS BEEN PERFECTED and has been listed for hearing at Toronto . You may ascertain from my office the aproximate date of hearing (see attached information).

Dated September 27, 1985

A. P. BRIDGES
Registrar of the
Divisional Court
Osgoode Hall
130 Queen Street West
Toronto, Ontario M5H 2N5
963-3252

TO: Lynn King,
King & Sachs,
Barristers & Solicitors,
320-111 Richmond Street West,
TORONTO, Ontario. M5H 3N6

TO: Charles Campbell, Esq.,
Iler, Campbell & Associates,
Barristers & Solicitors,
201-136 Simcoe Street,
TORONTO, Ontario. M5H 3G4

AND TO: Julian Polika, Q.C.,
Director, Crown Law Office,
Ministry of the Attorney-General,
18 King Street E., 17th Floor,
TORONTO, Ontario. M5C 1C5

FILE NO. 409/85

B E T W E E N :

ONTARIO FILM AND VIDEO APPRECIATION SOCIETY - and - ONTARIO FILM REVIEW BOARD

FOR YOUR INFORMATION:-

Respondent's Factum:-

To be delivered within 30 days after service upon you of the Applicant's material (Rule 61.11(2)). Three copies to be filed with proof of service (Rule 61.11(1)).

This application was perfected and listed on September 27, 1985.

This application is directed for a hearing before:

/X/ A three-judge panel of this Court.

/ / One judge of the Divisional Court pursuant to the Courts of Justice Act (Section 16(2)(c))

Hearing Date:

In the ordinary course of events, it is expected that this application will be reached for a hearing during the period FEB. - MARCH 1985.

Advice as to the arrangements for a hearing will be communicated to the office of counsel, by telephone, several weeks in advance of the proposed hearing date. In the case of a party acting on his/her own behalf, the arrangements will, in most cases, be communicated in writing.

In order to most effectively utilize the resources of the Court and avoid the waste of valuable court time, I am directed to advise counsel that they are expected to exhaust the possibility of settlement and to consider the advisability of abandonment of this matter before a hearing date is fixed.

A. P. BRIDGES,
REGISTRAR, DIVISIONAL COURT.

APB/cqp

NO. 469/85

SUPREME COURT OF ONTARIO

(DIVISIONAL COURT)

IN THE MATTER OF The Theatres Act, R.S.O. 1980, c. 498, as amended S.O. 1980, c. 56;

AND IN THE MATTER OF The Judicial Review Procedures Act, R.S.O. 1980, c. 224;

AND IN THE MATTER OF the Constitution Act, 1981 (Canada);

AND IN THE MATTER OF the Constitutional Questions Act, R.S.O. 1980, c. 86;

AND IN THE MATTER OF a certain application to the Ontario Film Review Board appointed under The Theatres Act;

B E T W E E N:

ONTARIO FILM AND VIDEO APPRECIATION SOCIETY

Applicant

-and-

ONTARIO FILM REVIEW BOARD

Respondent

CERTIFICATE OF PERFECTION

TAKE NOTICE that all the material required to be filed by the Applicant in the within matter has now been filed.

September 23, 1985.

TO: ARCHIE CAMPBELL
Deputy Attorney General
Ministry of the Attorney General
18 King Street West
17th Floor
Toronto, Ontario M5C 1C5

J. Polika, Q.C.
(416) 965-4118

Solicitor for the Respondent

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111 Richmond Street West
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Lynn King (416) 366-7392

ILER, CAMPBELL & ASSOCIATES
136 Simcoe Street, Suite 201
Toronto, Ontario M5H 3G4

Charles Campbell (416) 598-0103

Solicitors for the Applicant

ONTARIO FILM AND VIDEO APPRECIATION SOCIETY

and

ONTARIO FILM REVIEW BOARD

(Short title of proceeding)

Court file no. 409/85

SUPREME COURT OF ONTARIO
(Supreme or District)

Proceeding commenced at the Judicial District of York;

(DIVISIONAL COURT)

CERTIFICATE OF PERFECTION

DYE & DURHAM CO. LIMITED—Form No. 909

KING & SACHS
111 Richmond Street West
Suite 320
Toronto, Ontario M5H 3N6

Lynn King (416) 366-7392

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Toronto, Ontario M5H 3G4

Charles Campbell (416) 598-0103

Solicitors for the Applicant

AFFIDAVIT OF SERVICE—(SERVICE BY MAIL ON A SOLICITOR)—S.C.O. or D.C.O.
(Form 16B under the Rules)

DYE & DURHAM CO. LIMITED
Form No. 935

Court file no. 409/85

SUPREME COURT OF ONTARIO
(Supreme or District)
(Divisional Court)

(Parties in title of proceeding.)

BETWEEN:

ONTARIO FILM AND VIDEO
TION SOCIETY

Applicant

and

ILM REVIEW BOARD

Respondent

Filed Feb. 12/86
attached extra
Copies.

FFIDAVIT OF SERVICE

(Full name.) Teresa

if Toronto,

ity of Metropolitan Toronto,
egional Municipality, etc.)

MAKE OATH AND SAY:

(Identify person served.) 1. I served Mr. J. Polika, Q.C.

(Identify documents served.) with the Notice of Change of Solicitors

(Delete two.) by sending a copy by prepaid first class ~~(or registered or certified)~~ mail on January 30, 1986
(date)

(Name of solicitor.) to Archie Campbell, Deputy Attorney General

(Identify person.) the solicitor(s) for the Respondent

(Full mailing address.) at Ministry of the Attorney General, 18 King Street East, 17th Floor, Toronto, Ontario, M5C 1C5

Sworn before me at the City
of Toronto,
in the Municipality
of Metropolitan Toronto,
on January 30 1986

Debra Alward
(Signature of deponent)

Chl Campbell
Commissioner for Taking Affidavits, etc.

AFFIDAVIT OF SERVICE—(SERVICE BY MAIL ON A SOLICITOR)—S.C.O. or D.C.O.
(Form 16B under the Rules)

DYE & DURHAM CO. LIMITED
Form No. 935

Court file no. 409/85

SUPREME COURT OF ONTARIO
(Supreme or District)
(Divisional Court)

(Parties in title of proceeding.)

BETWEEN:

ONTARIO FILM AND VIDEO APPRECIATION SOCIETY

Applicant

and

ONTARIO FILM REVIEW BOARD

Respondent

AFFIDAVIT OF SERVICE

(Full name.) I, Debra Alward,

of the City *(City, Town, etc.)* of Toronto,

in the Municipality *(County, Regional Municipality, etc.)* of Metropolitan Toronto,

MAKE OATH AND SAY:

(Identify person served.) 1. I served Ms. Lynn King

(Identify documents served.) with the Notice of Change of Solicitors

(Delete two.) by sending a copy by prepaid first class ~~(or registered or certified)~~ mail on January 30, 1986 *(date)*

(Name of solicitor.) to KING & SACHS , the former

(Identify person.) ~~the~~ solicitor(s) for the Applicant

(Full mailing address.) at 111 Richmond Street West, Suite 320,
Toronto, Ontario, M5H 3N6

Sworn before me at the City
of Toronto,
in the Municipality
of Metropolitan Toronto,
on January 30 19 86

Commissioner for Taking Affidavits, etc.

Debra Alward
(Signature of deponent)

No. 409/85

SUPREME COURT OF ONTARIO
(DIVISIONAL COURT)

IN THE MATTER OF The Theatres Act, R.S.O. 1980, c.498, as amended S.O. 1980, c. 56;

AND IN THE MATTER OF The Judicial Review Procedures Act, R.S.O. 1980, c. 224;

AND IN THE MATTER OF the Constitution Act, 1981 (Canada);

AND IN THE MATTER OF the Constitution Questions Act, R.S.O. 1980, c. 86;

AND IN THE MATTER OF a certain application to the Ontario Film Review Board appointed under The Theatres Act.

B E T W E E N:

ONTARIO FILM AND VIDEO APPRECIATION SOCIETY

Applicant

and

ONTARIO FILM REVIEW BOARD

Respondent

NOTICE OF CHANGE OF SOLICITORS

TAKE NOTICE that the respondent herein has changed its solicitors from Archie Campbell, Deputy Attorney General, Ministry of the Attorney General to Chernos, Conway & Hutchinson, Suite 1205, P.O. Box 80, 200 King Street West, Toronto, Ontario, M5H 3T4.

May 27, 1986

CHERNOS, CONWAY & HUTCHINSON
Suite 1205, P.O. Box 80
200 King Street West
Toronto, Ontario
M5H 3T4

Julian Polika, Q.C.
(416) 597-8666

Solicitors for the respondent

TO:
ILER, CAMPBELL & ASSOCIATES
136 Simcoe Street, Suite 201
Toronto, Ontario
M5H 3G4

Charles Campbell (416) 598-0103

Solicitors for the Applicant

AND TO:
CROWN LAW OFFICE - CIVIL LAW
17th Floor,
18 King St. East,
TORONTO, Ontario
M5C 1C5

ONTARIO FILM AND VIDEO APPRECIATION SOCIETY and ONTARIO FILM REVIEW BOARD
Plaintiff Defendant

Court file no. 409/85

SUPREME COURT OF ONTARIO
(Divisional Court)
Proceeding commenced at TORONTO

NOTICE OF CHANGE OF SOLICITORS

CHERNOS, CONWAY & HUTCHINSON
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Toronto, Ontario
M5H 3T4

Julian Polika, Q.C.
(416) 597-8666

Solicitors for the respondents

Court File No. 409/85

SUPREME COURT OF ONTARIO

(Divisional Court)

B E T W E E N :

ONTARIO FILM AND VIDEO APPRECIATION SOCIETY

Applicant

- and -

ONTARIO FILM REVIEW BOARD

Respondent

NOTICE OF CONSTITUTIONAL QUESTION

The Applicant, Ontario Film and Video Appreciation Society, intends to question the constitutional validity or applicability of:

1) the decision made by the Ontario Film Review Board on February 18, 1985, and March 28, 1985, pertaining to the film Amerika;

2) ss. 3(5)(a) and (b) and ss. 35, 36, 38, 39 and 40 of the Theatres Act, R.S.O. 1980, c. 498 as amended by S.O. 1984, c. 56; and

3) s. 21 of Regulation 931, R.R.O. 1980, made under the Theatres Act, as amended by O.Reg. 56/85;

in an Application to be heard on April ~~15~~ 9th, 1986, at 10:00 a.m., 130 Queen Street West, Toronto, Ontario.

The following are the material facts giving rise to the constitutional question:

1. On February 14, 1985, David Poole, Director of the Ontario Film and Video Appreciation Society, requested approval of the Ontario Film Review Board for distribution and exhibition of several films, including Amerika.

2. On February 18, 1985, the Ontario Film Review Board required several eliminations of the film Amerika.

3. On March 20, 1985, Mr. Poole appealed that decision.

4. On March 28, 1985, the Ontario Film Review Board gave a decision on the appeal requiring several eliminations.

The following is the legal basis for the constitutional question:

1. s. 3(5)(a) and (b), ss. 35, 36, 38, 39 and 40 of the Theatres and s. 21 of Regulation 931, as amended, are ultra vires as matters of criminal law;

2. s. 3(5)(a) and (b), ss. 35, 36, 38, 39 and 40 of the Theatres and s. 21 of Regulation 931, as amended, are contrary to s. 2 of the Constitution Act, 1982 (Canada);

3. and such further and other grounds as counsel may advise and this Honourable Court permit.

DATED: March 19, 1986

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Court File No. 830/86

SUPREME COURT OF ONTARIO

(Divisional Court)

B E T W E E N :

ONTARIO FILM AND VIDEO APPRECIATION SOCIETY

Appellant

- and -

ONTARIO FILM REVIEW BOARD

Respondent

NOTICE OF CONSTITUTIONAL QUESTION

The Appellant, Ontario Film and Video Appreciation Society, intends to question the constitutional validity or applicability of:

1. the decision made by the Ontario Film Review Board on February 18, 1985, and March 28, 1985, pertaining to the film Amerika;

2. ss. 3 (5) (a) and (b) and ss. 35, 36, 38, 39 and 40 of the Theatres Act, R.S.O. 1980, c. 498 as amended by S.O. 1984, c. 56; and

3. s. 21 of Regulation 931, R.R.O. 1980, made under the Theatres Act, as amended by O. Reg. 56/85;

in an Appeal to be heard on September 15, 1986, at 10:00 a.m., 130 Queen Street West, Toronto, Ontario.

The following are the material facts giving rise to the constitutional question:

1. On February 14, 1985, David Poole, Director of the Ontario Film and Video Appreciation Society, requested approval of the Ontario Film Review Board for distribution and exhibition of several films, including Amerika.

2. On February 18, 1985, the Ontario Film Review Board required several eliminations of the film Amerika.

3. On March 20, 1985, Mr. Poole appealed that decision.

4. On March 28, 1985, the Ontario Film Review Board gave a decision on the appeal requiring several eliminations.

The following is the legal basis for the constitutional question:

1. s. 3 (5) (a) and (b), ss. 35, 36, 38, 39 and 40 of the Theatres Act and s. 21 of Regulation 931, as amended, are ultra vires as matters of criminal law;

2. s. 3 (5) (a) and (b), ss. 35, 36, 38, 39 and 40 of the Theatres Act and s. 21 of Regulation 931, as amended, are contrary to s. 2 of the Constitution Act, 1982 (Canada);

3. and such further and other grounds as counsel may advise and this Honourable Court permit.

August 28, 1986

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C

NO. 409/85

SUPREME COURT OF ONTARIO

(DIVISIONAL COURT)

IN THE MATTER OF The Theatres Act, R.S.O. 1980, c. 498, as amended S.O. 1980, c. 56;

AND IN THE MATTER OF The Judicial Review Procedures Act, R.S.O. 1980, c. 224;

AND IN THE MATTER OF the Constitution Act, 1981 (Canada);

AND IN THE MATTER OF the Constitution Questions Act, R.S.O. 1980, c. 86;

AND IN THE MATTER OF a certain application to the Ontario Film Review Board appointed under The Theatres Act;

B E T W E E N:

ONTARIO FILM AND VIDEO APPRECIATION SOCIETY

Applicant

-and-

ONTARIO FILM REVIEW BOARD

Respondent

APPLICANT'S FACTUM

PART I - The Parties and the Decision to be reviewed.

1. The Applicant is a no share capital corporation incorporated under the laws of the Province of Ontario for the purposes of stimulating interest in film and video arts.

2. The Applicant has a licence (No. 308) issued by the Theatres Branch, Ontario, to distribute 16 millimeter films in Ontario.

3. The Ontario Film Review Board is established pursuant to The Theatres Act, R.S.O. 1980, c. 498 and The Theatres Amendment Act, S.O. 1984, c. 56.

4. On February 18, 1985, the Ontario Film Review Board refused to approve for exhibition or distribution the 16 millimeter film Amerika without certain cuts being made. On March 28, 1985, the same Board, with different members sitting, upheld the original decision. The Applicant appeals that decision pursuant to The Theatres Amendment Act, S.O. 1984, c. 56, section 13 (35(8)). The Applicant further seeks judicial review of the Board's power to make such decision.

PART II - The Facts.

5. On February 14, 1985, the Applicant delivered the film Amerika, along with two other films, to the Ontario Film Review Board for approval to exhibit and distribute throughout Ontario.

Affidavit of David Poole, paragraph 3, Exhibit "A"

6. On February 18, 1985, the Ontario Film Review Board refused to approve the film for exhibition or distribution unless certain eliminations were made.

Affidavit of David Poole, paragraph 5, Exhibit "D"

7. On March 20, 1985, the Ontario Film and Video Appreciation Society appealed that decision pursuant to section 13 (35(5)) of The Theatres Amendment Act, S.O. 1984, c. 56.

Affidavit of David Poole, paragraph 6, Exhibit "E"

8. On March 28, 1985, the Ontario Film Review Board denied that appeal.

Affidavit of David Poole, paragraph 7, Exhibit "F"

PART III - The Issues and the Law.

First Issue

5. Sections 13 and 15 of The Theatres Amendment Act, S.O. 1984, c. 56, and Ontario Regulation 56/85 regulate the content of all film and video that may be viewed in the Province of Ontario in a public "exhibition", or "distributed" in the said Province as defined in section 1(c) of The Theatres Act, R.S.O. 1980, c. 498 and section 1(2)(ba) of said The Theatres Amendment Act respectively. The Act, as amended, does not regulate possession of film and video for personal use if such film or video, is or has been, neither distributed nor exhibited.

6. Pursuant to these sections no film or video may be exhibited or distributed unless its contents have been approved, in advance, by the Ontario Film Review Board. Section 61(1) and 61(2) of said The Theatres Act provide for penalties for offences against the Act including fines up to $25,000.00 and jail terms of up to one year. The legislation constitutes a system of censorship by prior restraint.

7. Ontario Regulation 56/85, adopted pursuant to section 22 of the said The Theatres Amendment Act, sets out

the criteria of censorship. These provisions are set out in Schedule B herein.

8. It is respectfully submitted that, given the nature of the criteria of censorship set out in the said legislation, the purpose of the legislation is, clearly, the control of public morality. Those criteria bear no relation to the regulation of trade or commerce. Furthermore the severe sanctions imposed for violation of the Act are, as stated in Re Information Retailers Association of Metropolitan Toronto Inc. and Municipality of Metropolitan Toronto 48 O.R. (2d) 290 at page 303:

> the hallmark of a very serious penalty expressing a strong moral judgment indeed.

It must be concluded that the censorship provisions are, in pith and substance, the regulation of morality which is the exclusive domain of the criminal law and ultra vires the province.

> Re Information Retailers Association of Metropolitan Toronto Inc. and Municipality of Metropolitan Toronto; Re Canadian Periodical Publishers Association and Municipality of Metropolitan Toronto (1984), 48. O.R. (2d) 290.
>
> Rio Hotel Limited v. Liquor Licencing Board (1983), 47 N.B.R. (2d) 436
>
> Re Sherwood Park Restaurant Inc. et al and Town of Markham et al; Re Wendy and Town of Markham (1984), 48 O.R. (2d) 449,
>
> Nordee Investments Limited v. The Corporation of the City of Burlington (1984), 48 O.R. (2d) 123.

9. The case of McNeil v. Nova Scotia Board of Censors, /1978/ 2 S.C.R. 662 applies in part to the circumstances of this case. There the Court upheld certain provisions of The Theatres And Amusements Act, R.S.N.S. 1967 c. 304, but did strike down one. Those upheld were the censorship provisions where no standards of censorship were set out in the Act or Regulations. The one struck down was a provision regarding theatrical performance that was held to be virtually identical to Criminal Code provisions. In the case at bar, the Applicant relies on the Supreme Court of Canada's rationale for striking down a provision of the Nova Scotia Act. It would distinguish the upholding of the remaining provisions on the basis that the Ontario legislation is now different from the Nova Scotia legislation. In Ontario there are now detailed criteria of censorship embodied in Regulation 56/85 and these make clear the moral purpose of the censorship provisions. It must also be noted that the "offence" section of the Nova Scotia legislation provided only for a token fine of between $20.00 and $100.00 and no jail term, whereas the Ontario legislation provides for a fine of up to $2,500.00 and up to one year in jail.

McNeil v. Nova Scotia Board of Censors,
/1978/ 2 S.C.R. 662

10. Furthermore this Court in Re Information Retailers has held explicitly that the McNeil case is not authority for the proposition that provincial jurisdiction over censorship derives from section 92(16) of the British North America Act

which deal with matters of "local and private nature in the Province".

Re Info Retailers supra, p. 299-300

11. The case of R. v. Westendorp (1983), 2 C.C.C. (3d) 330 struck down municipal by-laws regarding prostitution. The Supreme Court held that the offence in the municipal by-law was "triggered" by the same deeds, soliciting by prostitutes, as the Criminal Code provisions on soliciting and that the by-law was an invasion of federal criminal power. Similarly, in this case provincial penalties are "triggered" by the deeds that trigger the criminal law of obscenity. The criteria of censorship and of obscenity are for all practical purposes indistinguishable. In this respect it is noteworthy that a new and sweeping definition of "distribution" in The Theatres Amendment Act, S.O. 1984 sec. 1(2) brings within the ambit of censorship virtually every exchange of film between persons except where created by the citizen for his or her own use.

Criminal Code of Canada, R.S.C. 1970, c. 34, s. 159

R. v. Westendorp (1983), 2 C.C.C. (3d) 330

Second Issue and The Law

12. In the event that the impugned provisions of the said The Theatres Amendment Act are held to be enacted for a valid purpose intra vires the provincial legislature it is respectfully submitted that the provisions nevertheless conflict with the Criminal Code and the doctrine of paramountcy requires that they be declared ultra vires.

13. The standards of censorship duplicate matters already criminal pursuant to the Criminal Code of Canada. For example, section 21(2)(e) of Ontario Regulation 56/85 prohibiting "the explicit depiction of sexual activity" duplicates the Criminal Code provisions against the distribution of obscene material defined as the "undue exploitation of sex". Thus the provincial law is an attempt to regulate matters already dealt with by federal laws. Furthermore, it appears that if there is any distinction to be drawn between the two legislative schemes it is that the provincial scheme narrows the ambit of defences available under the Criminal Code. In the case at Bar the Board ordered elimination of scenes of fellatio and rear penetration. In the case of R. v. Doug Rankine Company Ltd. and Act III Video Productions Ltd. (1983), 36 C.R. (3d) 154 Borins, C.C.J. found, in acquitting certain films of obscenity that "contemporary community standards would tolerate scenes of fellatio and anal sex".

As well, in the Criminal Code the "undueness" of the sex is an important issue of fact and may constitute a defence. One could readily be guilty of an offence under the provincial legislation for which there is a defence under the federal legislation.

R. v. Doug Rankine Company Ltd. and Act III Video Productions Ltd. (1983), 36 C.R. (3d) 154

Nordee Investments Limited v. The Corporation of the City of Burlington, supra

McNeil v. Nova Scotia Board of Censors, supra

Criminal Code of Canada, Schedule B

Third Issue and the Law

14. It is submitted that this Court, on appeal from the Board of Review, must determine as a matter of fact whether the film in question violates the standards in The Theatres Amendment Act and Ontario Regulation 85/56.

15. The general character and integrity of the film Amerika indicate that the scenes of sexual activity are not intended to appeal to prurient interests. Nor do they in fact appeal to prurient interests. The film does not violate community standards of tolerance. The scenes of sexual activity are an integral part of the filmmaker's "vision" of "Amerika" and an important part of the "message" regarding his view of the decadence of America. Far from degrading women, the film attacks a social, cultural and economic system that degrades women. The film, taken as a whole, or in its parts, does not unduly exploit sex. The filmmaker is a noted artist whose work is technically outstanding and widely praised. His artistic integrity has not been challenged.

Affidavit of David Poole, paragraph 6, Exhibit "E"

R. v. Towne Cinema Theatres, S.C.C., May 9, 1985 (unreported) [1985] 1 SCR 494

16. Indeed the standards applied by the Board of Censors in this case prohibiting scenes of fellatio and anal sex are directly at odds with the recent decisions in R. v. Doug Rankine, which held that such matters were not obscene and are within "community standards".

> R. v. Doug Rankin and Act III Video Company and Productions Ltd., supra
>
> Multiple Access Ltd. v. McCutcheon (1982), 138 D.L.R. (3d) 1

Fourth Issue and the Law

17. It is respectfully submitted that a ban on "the explicit depiction of sexual activity" is not a reasonable limit prescribed by law demonstrably justified in a free and democratic society.

O. Reg 56/85, sec 21.

18. Both provincial censorship legislation and federal obscenity legislation curtail "free expression" as guaranteed by the Charter of Rights and Freedoms. It is respectfully submitted that it is not a "reasonable limit ... demonstrably justified" that renders free expression subject to two different legislative schemes with similar, if not identical criteria, established by two different governments for virtually identical purposes and both enforced by penal sanctions.

19. Perhaps it can be admitted that "free expression" may be infringed for purposes of protecting public morality. That being so it must be recognized that there can only be one standard by which to justify an infringement given that the Charter is the supreme and fundamental law of the land. Two

Add para 17 A

The Regulation which sets out the basis of censorship is ~~overbroad~~ vague overly broad to be justifiable in the ~~wording~~ language of section 1 of the Charter. It allows censorship ~~of explicit sex" when such~~ of "the explicit depiction of sexual activity" without such qualification as ~~must be~~ are necessary to be consistent with the principals of "freedom of expression", in particular whether the film offends community standards of decency, whether the dominant characteristic is the undue exploitation of sex and whether the public good is served by

expression sought to be impunged. No clear standards of censorship are set out.

~~United States v Robel 389 US 258~~

Re Information Retailers 52 OR(2d) 449, 468

different legislative schemes operating for the same purpose will inevitably generate contrary results in application that cannot be justified. The facts of this case illustrate that proposition. The film in question is being censored, but does not and has never been alleged to violate the law of obscenity.

The Constitution Act

Charter of Rights and Freedoms, sections 1, 2
Schedule "B"

PART IV - Order Sought

20. The Applicant seeks the following orders:

(a) an order that the decisions made by the Ontario Film Review Board on February 18, 1985 and March 28, 1985, pertaining to the film Amerika be quashed;

(b) for a declaration that ss. 3 (5)(a) and (b) and ss. 13 and 15 of The Theatres Amendment Act, S.O. 1984 c. 56 are null and void;

(c) such further and other order as seems just.

All of which is respectfully submitted.

August 2, 1985.

KING & SACHS
Per:

ILER, CAMPBELL & ASSOCIATES
Per:

C.D. Campbell

SCHEDULE "A"

Re Information Retailers Association of Metropolitan Toronto Inc. and Municipality of Metropolitan Toronto	(1984) 48 O.R. (2d) 290
Rio Hotel Limited v. Liquor Licensing Board	(1983) 47 N.B.R. (2d) 436
Re Sherwood Park Restaurant Inc. et al and Town of Markham	(1984) 48 O.R. (2d) 449
Nordee Investments Limited v. The Corporation of the City of Burlington	(1984) 48 O.R. (2d) 123
McNeil v. Nova Scotia Board of Censors	/1978/ 2 S.C.R. 662
R. v. Westendorp	(1983) 2 C.C.C. (3d) 330
R. v. Doug Rankine Company Ltd. and Act III Video Productions Ltd.	(1983) 36 C.R. (3d) 154
R. v. Towne Cinema Theatres Ltd.	Supreme Court of Canada May 9, 1985 unreported
Multiple Access Ltd. v. McCutcheon	(1982) 138 D.L.R. (3d) 1

Additional Cases

Re Info Retailers 52 OR(2d) 449

~~Nordee~~

Koumoudouros

Town Cinema

~~Red Hot Video~~

(Goldmax)

SCHEDULE "B"

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CHAPTER 498

Theatres Act

1. In this Act, Interpretation

(a) "Board" means the Board of Censors referred to in section 3;

(b) "Director" means the Director appointed under this Act;

(c) "exhibit", when used in respect of film or moving pictures, means to show film for viewing for direct or indirect gain or for viewing by the public and "exhibition" has a corresponding meaning;

(d) "film" means cinematographic film, videotape and any other medium from which may be produced visual images that may be viewed as moving pictures;

(e) "film depot" means any building or premises in which film is assembled for shipment;

(f) "film exchange" means the business of renting, leasing, selling or distributing film;

(g) "inspector" means an inspector appointed under this Act;

(h) "Minister" means the Minister of Consumer and Commercial Relations;

(i) "projection equipment" or "projector" means the equipment necessary or used for the transducing from a film to moving images, including equipment for accompanying sound;

(j) "projection room" means the room in which projection equipment is located while in use;

(*k*) "projectionist" means a person who operates projection equipment;

(*l*) "regulations" means the regulations made under this Act;

(*m*) "standard film" means cinematographic film of 35 millimetres or more in width;

(*n*) "Treasurer" means the Treasurer of Ontario and Minister of Economics. R.S.O. 1970, c. 459, s. 1; 1972, c. 1, s. 56; 1972, c. 3, s. 17 (1); 1975, c. 60, s. 1; 1979, c. 29, s. 1.

Director

2.—(1) The Lieutenant Governor in Council may appoint a Director to administer and enforce this Act and the regulations and he has all the powers of an inspector.

Assistant Director

(2) The Lieutenant Governor in Council may appoint an Assistant Director who shall act in lieu of the Director,

(*a*) in the absence of the Director; or

(*b*) when so instructed to act by the Director,

and when so acting has all the powers of the Director. R.S.O. 1970, c. 459, s. 2.

Board

3.—(1) The board known as the Board of Censors is continued and shall consist of the Director who shall be chairman of the Board and the Assistant Director who shall be vice-chairman of the Board and such other persons as the Lieutenant Governor in Council may appoint.

Powers

(2) The Board has power,

(*a*) to censor any film and, when authorized by the person who submits film to the Board for approval, remove by cutting or otherwise from the film any portion thereof that it does not approve of for exhibition in Ontario;

(*b*) subject to the regulations, to approve, prohibit or regulate the exhibition of any film in Ontario;

(c) to censor any advertising matter in connection with any film or the exhibition thereof;

(d) subject to the regulations, to approve, prohibit or regulate advertising in Ontario in connection with any film or the exhibition thereof;

(e) to classify any film as adult entertainment;

(f) to classify any film as restricted entertainment; and

(g) to carry out its duties under this Act and the regulations.

Idem

(3) The Board may designate one or more of its members to exercise the powers of the Board under clauses (2) (c) and (d) and in the exercise of such powers the member or members so designated have a right of entry to any theatre. R.S.O. 1970, c. 459, s. 3.

CENSOR OF FILMS AND ADVERTISING

Approval of film

35. All film before being exhibited in Ontario shall be submitted to the Board for approval, accompanied by the prescribed fee. R.S.O. 1970, c. 459, s. 36.

Stamping

36. When film is approved by the Board, it shall be so stamped. R.S.O. 1970, c. 459, s. 37.

Units for approval

37.—(1) Every film or class of film submitted to the Board for approval under section 35 shall be in such lengths or units as are prescribed by the regulations and each such length or unit shall be in a container therefor.

Certificate to accompany film

(2) A certificate signed by the chairman or vice-chairman of the Board shall be issued in respect of the approval of the film in each container and shall accompany the film at all times. 1975, c. 60, s. 3.

Lost certificates

(3) Where certificates are lost or destroyed, application for duplicate certificates may be made to the Board setting forth the title of the film and the number of certificates lost or destroyed, and accompanied by the prescribed fee. R.S.O. 1970, c. 459, s. 38 (2).

Exhibition of film not approved by Board

38. No person shall exhibit or cause to be exhibited in Ontario any film that has not been approved by the Board. R.S.O. 1970, c. 459, s. 39.

Alteration of film

39. No person shall alter or cause to be altered any film from its state as approved by the Board. R.S.O. 1970, c. 459, s. 40.

Approval of advertising

40.—(1) No person shall use or display any advertising matter in connection with film or the exhibition thereof unless a sample of the advertising matter has been approved by the Board.

Samples to be submitted to Board

(2) Before advertising matter in connection with film or the exhibition thereof is used or displayed in Ontario, a sample thereof in duplicate accompanied by the prescribed fee shall be submitted to the Board for approval.

Samples stamped approved

(3) Where a sample of advertising matter is approved by the Board, it shall be so stamped and one sample shall be returned to the person who submitted it. R.S.O. 1970, c. 459, s. 41.

FILM EXCHANGES

Film exchange licence

41. No person shall carry on the business of a film exchange without a licence therefor from the Director. 1975, c. 60, s. 4.

Film exchange licence, application

42.—(1) Subject to subsection (2), an applicant for a film exchange licence is entitled, on payment of the prescribed fee, to be granted a film exchange licence.

Refusal to issue

(2) The Director may, after a hearing, refuse to issue a film exchange licence to an applicant therefor,

(*a*) if a film exchange licence was previously issued to him under this Act and such licence is suspended or such licence was cancelled and the grounds for such cancellation continue to exist; or

(*b*) where the application is for a standard film exchange licence, if the building in which the film exchange is located,

(i) is not of fire resistive construction in that portion of the building in which film is handled or stored,

(ii) is occupied in whole or in part as a dwelling,

(iii) is occupied in whole or in part by another business that is dangerous to the carrying on of the business of the film exchange, or

(iv) otherwise does not comply with this Act and the regulations. 1971, c. 50, s. 82 (8).

Renewal of licence

43. Subject to section 45, the holder of a film exchange licence is entitled to a renewal thereof upon application therefor and payment of the prescribed fee. 1971, c. 50, s. 82 (9), *part*.

Transfer of licence

44.—(1) The holder of a film exchange licence is entitled to transfer his licence with the written consent of the Director.

Consent of Director

(2) The Director shall not refuse his consent under subsection (1) if the transferee would be entitled to the issue of the film exchange licence if he made application therefor. 1971, c. 50, s. 82 (9), *part*.

Refusal to renew, suspension or cancellation

45. The Director may, after a hearing, refuse to renew or suspend or cancel any film exchange licence if,

(*a*) the licensee has contravened any of the provisions of this Act or the regulations and his conduct raises a reasonable doubt as to whether he will comply with this Act and the regulations in carrying on the business of a film exchange; or

(*b*) the issue of a licence would be refused under clause 42 (2) (*b*) if the licensee were an applicant for a licence. 1971, c. 50, s. 82 (9), *part*.

Distribution of standard film

46. No film exchange shall supply standard film to any person who does not hold a theatre licence under this Act or a licence under this Act to exhibit standard film in any building or premises other than a theatre in respect of which a licence is in force under this Act. R.S.O. 1970, c. 459, s. 48.

Distribution of advertising matter

47. No film exchange or agent therefor shall supply any person with advertising matter in connection with film or the exhibition thereof that has not been approved by the Board. R.S.O. 1970, c. 459, s. 49.

Fire loss

48. Where a fire occurs in a building or premises occupied by a film exchange or where any film of the film exchange is damaged or lost by reason of a fire elsewhere than in the building or premises occupied by the film exchange, the licensee of the film exchange or, in his absence, the person in

charge shall forthwith notify the Director in writing stating the apparent cause of the fire and any damage or loss resulting therefrom. R.S.O. 1970, c. 459, s. 50.

Safety film

49. No film other than film having a cellulose acetate base or a base having equivalent slow-burning characteristics and commonly known as safety film shall be kept or stored in a film exchange or film depot. R.S.O. 1970, c. 459, s. 51.

OFFENCES

Offence

61.—(1) Every person who,

(*a*) knowingly furnishes false information in any application under this Act or in any statement or return required to be furnished under this Act or the regulations;

(*b*) knowingly fails to comply with any order, direction or other requirement made under this Act; or

(*c*) contravenes any provision of this Act or the regulations,

and every director or officer of a corporation who knowingly concurs in such furnishing, failure or contravention is guilty of an offence and on conviction is liable to a fine of not more than $2,000 or to imprisonment for a term of not more than one year, or to both.

Corporations

(2) Where a corporation is convicted of an offence under subsection (1), the maximum penalty that may be imposed upon the corporation is $25,000 and not as provided therein. 1975, c. 60, s. 6.

Application of fees

62. All fees collected under this Act shall be paid to the Treasurer and shall form part of the Consolidated Revenue Fund. R.S.O. 1970, c. 459, s. 59.

THEATRES ACT

O. Reg. 56/85.
General.
Made—January 17th, 1985.
Filed—February 1st, 1985.

REGULATION TO AMEND REGULATION 931 OF REVISED REGULATIONS OF ONTARIO, 1980 MADE UNDER THE THEATRES ACT

1. Sections 18 and 19 of Regulation 931 of Revised Regulations of Ontario, 1980, as remade by section 2 of Ontario Regulation 438/81, are revoked and the following substituted therefor:

18.—(1) Every person who exhibits film shall prominently display at the principal entrance to the theatre or other premises where the film is being exhibited a sign indicating the classification of the film.

(2) Where film classified as "adult accompaniment" is being exhibited, the person exhibiting the film shall, in addition to the sign required under subsection (1), prominently display at the principal entrance to the theatre or other premises where the film is being exhibited, a notice that persons under fourteen years of age must be accompanied by a person eighteen years of age or over.

(3) Where film classified as restricted is exhibited, the person exhibiting the film shall prominently display at the principal entrance to the theatre or other premises where the film is being exhibited a sign bearing on both sides a silhouette of a key on a background above which is printed the word "admittance" and below which is printed the words "to persons eighteen years of age or over" with the word "restricted" printed on the key.

(4) Where the Board requires that information be included in any advertising used in connection with the exhibition of a film, a notice shall be prominently displayed at the principal entrance to the theatre or other premises where the film is being exhibited that sets out the information required. O. Reg. 56/85, s. 1, *part*.

ADMISSION RESTRICTIONS

19.—(1) No person shall exhibit a film classified as restricted where any person apparently under eighteen years of age is present.

(2) Where a film is classified as adult accompaniment, no person shall exhibit the film where a person apparently under fourteen years of age is present unless accompanied by an adult. O. Reg. 56/85, s. 1, *part*.

2. The said Regulation is amended by adding thereto the following section:

21.—(1) In exercising its authority under sections 3 and 35 of the Act, the Board shall consider the film in its entirety and take into account the general character and integrity of the film.

(2) After viewing a film, the Board may refuse to approve a film for exhibition or distribution in Ontario where the film contains,

(*a*) a graphic or prolonged scene of violence, torture, crime, cruelty, horror or human degradation;

(*b*) the depiction of the physical abuse or humiliation of human beings for purposes of sexual gratification or as pleasing to the victim;

(*c*) a scene where a person who is or is intended to represent a person under the age of sixteen years appears,

(i) nude or partially nude in a sexually suggestive context, or

(ii) in a scene of explicit sexual activity;

(*d*) the explicit and gratuitous depiction of urination, defecation or vomiting;

(*e*) the explicit depiction of sexual activity;

(*f*) a scene depicting indignities to the human body in an explicit manner;

(*g*) a scene where there is undue emphasis on human genital organs; or

(*h*) a scene where an animal has been abused in the making of the film.

(3) In this section, "sexual activity" means acts, whether real or simulated, of intercourse or masturbation, and includes the depiction of genital, anal or oral-genital connection between human beings or human beings and animals, and anal or genital connection between human beings by means of objects. O. Reg. 56/85, s. 2.

3. Sections 57 and 58 of the said Regulation are revoked and the following substituted therefor:

57.—(1) Subject to section 58, where standard film is submitted to the Board for approval for exhibition, the approval of the Board shall be indicated by,

(*a*) stamping each reel of the film submitted with an embossed metal stamp bearing the words "approved by Board (Ontario)"; and

(*b*) issuing a certificate of approval in Form 16 for each container of the film that is approved.

(2) Where film other than standard film is submitted to the Board for approval for exhibition, the approval of the Board shall be indicated by a certificate of approval for each container that is approved.

(3) Subject to section 58*a*, a person submitting a film for approval for exhibition may, upon paying the prescribed fee, order certificates of approval for copies of an approved film and the certificates constitute approval without each copy of the film being stamped. O. Reg. 56/85, s. 3, *part*.

58. Where film is approved by the Board for exhibition upon the condition that the film is to be exhibited in designated locations or on specified dates, the film shall not be stamped in accordance with subsection 57 (1) and the certificate of approval issued for the film shall indicate the conditions of exhibition. O. Reg. 56/85, s. 3, *part*.

58*a*. Where the Board approves a film that is submitted on standard film for exhibition after the removal of a scene or scenes that it refused to approve, the Board shall not issue a certificate of approval for copies of the film unless the copy is submitted to the Board for stamping in accordance with subsection 57 (1). O. Reg. 56/85, s. 3, *part*.

58*b*.—(1) A certificate of approval issued for a film shall accompany the film at all times.

(2) Where a certificate of approval is lost or destroyed, an application for duplicate certificates may be made to the Board setting forth the title of the film and the number of certificates lost or destroyed and by paying the fee prescribed for each certificate as set out in section 61. O. Reg. 56/85, s. 3, *part*.

4. Section 61 of the said Regulation, as remade by section 1 of Ontario Regulation 29/82, is amended by adding thereto the following paragraphs:

20. Subject to item 14, for screening film for distribution	1 per minute of screening
21. For the approval for distribution of a film that has previously been approved by the Board for exhibition	15
22. For review of a film to determine parity with a version of the film previously approved and classified by the Board	.50 per minute of screening
23. For each sticker required under section 63	.25

5. Sections 63 and 64 of the said Regulation, as made by section 1 of Ontario Regulation 600/81, are revoked and the following substituted therefor:

APPROVAL FOR DISTRIBUTION

63.—(1) An application to the Board for approval to distribute a film shall be made by submitting two copies of the film to the Board and paying the prescribed fee.

(2) Where the Board approves a film for distribution, it shall retain one copy of the film and affix a sticker setting out the film's classification to the film cassette, cartridge or other apparatus.

(3) The approval of the Board of a film for distribution shall be indicated by affixing a sticker issued by the Board to the cassette, cartridge or other apparatus on each copy of the film.

(4) The person who submitted the film for approval for distribution may, upon payment of the prescribed fee, order the number of stickers required for the film and is responsible for properly affixing the sticker to each copy. O. Reg. 56/85, s. 5.

IMMORAL THEATRICAL PERFORMANCE—Person taking part.

163. (1) Every one commits an offence who, being the lessee, manager, agent or person in charge of a theatre, presents or gives or allows to be presented or given therein an immoral, indecent or obscene performance, entertainment or representation.

(2) Every one commits an offence who takes part or appears as an actor, performer, or assistant in any capacity, in an immoral, indecent or obscene performance, entertainment or representation in a theatre. 1953-54, c. 51, s. 152.

CAUSING DISTURBANCE, INDECENT EXHIBITION, LOITERING, ETC. — Evidence of peace officer.

171. (1) Every one who

(a) not being in a dwelling-house causes a disturbance in or near a public place,

(i) by fighting, screaming, shouting, swearing, singing or using insulting or obscene language,

(ii) by being drunk, or

(iii) by impeding or molesting other persons,

(b) openly exposes or exhibits an indecent exhibition in a public place,

(c) loiters in a public place and in any way obstructs persons who are there, or

(d) disturbs the peace and quiet of the occupants of a dwelling-house by discharging firearms or by other disorderly conduct in a public place or who, not being an occupant of a dwelling-house comprised in a particular building or structure, disturbs the peace and quiet of the occupants of a dwelling-house comprised in the building or structure by discharging firearms or by other disorderly conduct in any part of a building or structure to which, at the time of such conduct, the occupants of two or more dwelling houses comprised in the building or structure have access as of right or by invitation, express or implied,

is guilty of an offence punishable on summary conviction. 1953-54, c. 51, s. 160; 1972, c. 13, s. 11.

(2) In the absence of other evidence, or by way of corroboration of other evidence, a summary conviction court may infer from the evidence of a peace officer relating to the conduct of a person or persons, whether ascertained or not, that a disturbance described in paragraph (1)*(a)* or *(d)* was caused or occurred. 1974-75-76, c. 93, s. 9.

CONSTITUTION ACT, 1981

PART I **SCHEDULE B**

CANADIAN CHARTER OF RIGHTS AND FREEDOMS

Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law:

Guarantee of Rights and Freedoms

Rights and freedoms in Canada

1. The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

Fundamental Freedoms

Fundamental freedoms

2. Everyone has the following fundamental freedoms:
(*a*) freedom of conscience and religion;
(*b*) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
(*c*) freedom of peaceful assembly; and
(*d*) freedom of association.

Democratic Rights

Democratic rights of citizens

3. Every citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein.

Maximum duration of legislative bodies

4. (1) No House of Commons and no legislative assembly shall continue for longer than five years from the date fixed for the return of the writs at a general election of its members.

Application where numbers warrant

(3) The right of citizens of Canada under subsections (1) and (2) to have their children receive primary and secondary school instruction in the language of the English or French linguistic minority population of a province

(*a*) applies wherever in the province the number of children of citizens who have such a right is sufficient to warrant the provision to them out of public funds of minority language instruction; and

(*b*) includes, where the number of those children so warrants, the right to have them receive that instruction in minority language educational facilities provided out of public funds.

Enforcement

Enforcement of guaranteed rights and freedoms

24. (1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

Exclusion of evidence bringing administration of justice into disrepute

(2) Where, in proceedings under subsection (1), a court concludes that evidence was obtained in a manner that infringed or denied any rights or freedoms guaranteed by this Charter, the evidence shall be excluded if it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute.

General

Aboriginal rights and freedoms not affected by Charter

25. The guarantee in this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada including

(*a*) any rights or freedoms that have been recognized by the Royal Proclamation of October 7, 1763; and

(*b*) any rights or freedoms that may be acquired by the aboriginal peoples of Canada by way of land claims settlement.

PART VII

GENERAL

Primacy of Constitution of Canada

52. (1) The Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect.

Constitution of Canada

(2) The Constitution of Canada includes

(*a*) the *Canada Act*, including this Act;

(*b*) the Acts and orders referred to in Schedule I; and

(*c*) any amendment to any Act or order referred to in paragraph (*a*) or (*b*).

Amendments to Constitution of Canada

(3) Amendments to the Constitution of Canada shall be made only in accordance with the authority contained in the Constitution of Canada.

Repeals and new names

53. (1) The enactments referred to in Column I of Schedule I are hereby repealed or amended to the extent indicated in Column II thereof and, unless repealed, shall continue as law in Canada under the names set out in Column III thereof.

Consequential amendments

(2) Every enactment, except the *Canada Act*, that refers to an enactment referred to in Schedule I by the name in Column I thereof is hereby amended by substituting for that name the corresponding name in Column III thereof, and any British North America Act not referred to in Schedule I may be cited as the *Constitution Act* followed by the year and number, if any, of its enactment.

D

NO. 409/85

SUPREME COURT OF ONTARIO

(DIVISIONAL COURT)

IN THE MATTER OF The Theatres Act, R.S.O. 1980, c. 498, as amended S.O. 1980, c. 56;

AND IN THE MATTER OF The Judicial Review Procedures Act, R.S.O. 1980, c. 224;

AND IN THE MATTER OF the Constitution Act, 1981 (Canada);

AND IN THE MATTER OF the Constitution Questions Act, R.S.O. 1980, c. 86;

AND IN THE MATTER OF a certain application to the Ontario Film Review Board appointed under The Theatres Act;

B E T W E E N:

ONTARIO FILM AND VIDEO APPRECIATION SOCIETY

Applicant

-and-

ONTARIO FILM REVIEW BOARD

Respondent

APPLICANT'S RECORD

KING & SACHS
111 Richmond Street West, Suite 320
Toronto, Ontario
M5H 3N6

Lynn King (416) 366-7392

ILER, CAMPBELL & ASSOCIATES
136 Simcoe Street, Suite 201
Toronto, Ontario
M5H 3G4

Charles Campbell (416) 598-0103

Solicitors for the Applicant

ARCHIE CAMPBELL
Deputy Attorney General
Ministry of the Attorney General
18 King Street West, 17th Floor
Toronto, Ontario
M5C 1C5

J. Polika, Q.C. (416) 965-4118

Solicitor for the Respondent

NO. 409/85

SUPREME COURT OF ONTARIO

(DIVISIONAL COURT)

IN THE MATTER OF The Theatres Act, R.S.O. 1980, c. 498, as amended S.O. 1980, c. 56;

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B E T W E E N:

ONTARIO FILM AND VIDEO APPRECIATION SOCIETY

Applicant

-and-

ONTARIO FILM REVIEW BOARD

Respondent

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NO. 404/85

SUPREME COURT OF ONTARIO

(DIVISIONAL COURT)

IN THE MATTER OF The Theatres Act, R.S.O. 1980, c. 498, as amended S.O. 1980, c. 56;

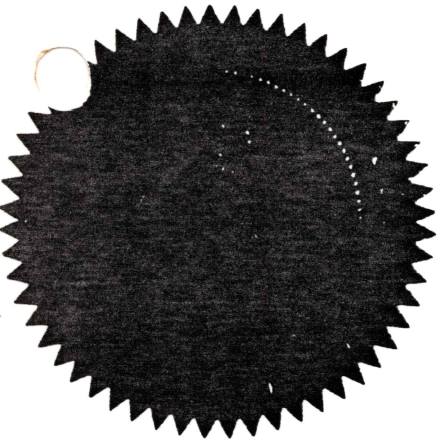
AND IN THE MATTER OF The Judicial Review Procedures Act, R.S.O. 1980, c. 224;

AND IN THE MATTER OF the Constitution Act, 1981 (Canada);

AND IN THE MATTER OF the Constitutional Questions Act, R.S.O. 1980, c. 86;

AND IN THE MATTER OF a certain application to the Ontario Film Review Board appointed under The Theatres Act;

B E T W E E N:



ONTARIO FILM AND VIDEO APPRECIATION SOCIETY

Applicant

-and-

ONTARIO FILM REVIEW BOARD

Respondent

NOTICE OF APPLICATION FOR JUDICIAL REVIEW

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicant. The claim made by the Applicant appears on the following page.

THIS APPLICATION for judicial review will come on for a hearing before the Divisional Court on a date and at a place to be fixed by the Registrar of the Divisional Court. The

applicant requests that this application be heard at the Divisional Court, 130 Queen Street West, Toronto, Ontario.

IF YOU WISH TO OPPOSE THIS APPLICATION, you or an Ontario lawyer acting for you must forthwith prepare a Notice of Appeance in Form 38C prescribed by the Rules of Civil Procedure, serve it on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in the office of the Divisional Court, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE, OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in the office of the Divisional Court within thirty days after service on you of the Applicant's application record, or not later than 2 p.m. on the day before the hearing, whichever is earlier.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

DATE: April 25, 1985. Issued by "A. P. Bridges" per Rose Sbrana

Divisional Court Office
Osgoode Hall
130 Queen Street West
Toronto, Ontario
M5H 2N5

TO: Ontario Film Review Board
Ministry of Consumer and
Commercial Relations
1075 Millwood Road
Toronto, Ontario

APPLICATION

1. The Applicant makes application for:

(a) an order that the decisions made by the Ontario Film Review Board on February 18, 1985, and March 28, 1985, pertaining to the film Amerika be quashed;

(b) for a declaration that ss. 3(5)(a) and (b) and ss. 13 and 15 of the Theatres Amendment Act, S.O. 1984, c. 56, are null and void;

(c) or for such further and other order as seems just.

2. The grounds for the application are:

(a) s. 3(5)(a) and (b), ss. 13 and 15 are ultra vires as matters of criminal law;

(b) s. 3(5)(a) and (b), ss. 13 and 15 are contrary to s. 2 of the Constitution Act, 1982 (Canada);

(c) and such further and other grounds as counsel may advise and this Honourable Court permit.

3. The following documentary evidence will be used at the hearing of the application:

(a) Affidavit of David Poole, sworn April 23rd, 1985.

DATED: April 25, 1985.

KING & SACHS
111 Richmond Street West
Suite 320
Toronto, Ontario
M5H 3N6

Lynn King 366-7392

Solicitors for the Applicant

NO. 409/85

SUPREME COURT OF ONTARIO

(DIVISIONAL COURT)

IN THE MATTER OF The Theatres Act, R.S.O. 1980, c. 498, as amended, S.O. 1984, c. 56;

AND IN THE MATTER OF The Judicial Review Procedures Act, R.S.O. 1980, c. 224;

AND IN THE MATTER OF the Constitution Act, 1981 (Canada);

AND IN THE MATTER OF the Constitutional Questions Act, R.S.O. 1980, c. 86;

AND IN THE MATTER OF a certain application to the Film Review Board appointed under The Theatres Act;

B E T W E E N:

ONTARIO FILM AND VIDEO APPRECIATION SOCIETY

Applicant

-and-

ONTARIO FILM REVIEW BOARD

Respondent

AFFIDAVIT

I, DAVID POOLE, of the City of Toronto, in the Judicial District of York, MAKE OATH AND SAY AS FOLLOWS:

1. I am a Director of the Ontario Film and Video Appreciation Society, a corporation duly incorporated under the laws of the Province of Ontario, and as such have knowledge of the matters hereinafter referred to.

2. Ontario Film And Video Appreciation Society is a licensed distributor in the Province of Ontario for 16 millimeter and videotape. Its Film Exchange License Numbers are: 308 and 311.

3. On February 14, 1985, I delivered a letter to the Ontario Film Review Board requesting approval for distribution and exhibition of 3 16 millimeter films, namely The Art of Worldly Wisdom, Rameau's Nephew and Amerika (including the segment "A Message From Our Sponsor"). I also delivered the three films. Attached hereto and marked as Exhibit "A" to this my Affidavit is a true copy of the said letter.

4. On March 1, 1985, the Ontario Film Review Board approved as Restricted 2 of the films, namely The Art of Worldly Wisdom and Rameau's Nephew. Attached hereto and marked as Exhibits "B" and "C" respectively to this my Affidavit is a true copy of the Summary Reports from the board of censors.

5. On February 18, 1985, the Ontario Film Review Board gave a decision concerning the film Amerika requiring several eliminations. Attached hereto and marked as Exhibit "D" to this my Affidavit is a true copy of the Summary Report from the board of censors.

6. On March 20, 1985, I had delivered a letter of appeal pursuant to section 13(5) of the Theatres Amendment Act, S.O. 1985, c. 56. Attached hereto and marked as Exhibit "C" to this my Affidavit is a true copy of the said letter together with its enclosures.

7. On March 28, 1985, the Ontario Film Review Board gave a decision pursuant to that appeal requiring several eliminations. Attached hereto and marked as Exhibit "F" to this my Affidavit is a copy of the said Summary Report of the board of censors.

8. This Affidavit is sworn in support of an application for Judicial Review and for no other or improper purpose.

SWORN BEFORE ME at the)
City of Toronto, in the)
Municipality of)
Metropolitan Toronto, this)
23 day of June , 1985.)

D. Poole
DAVID POOLE

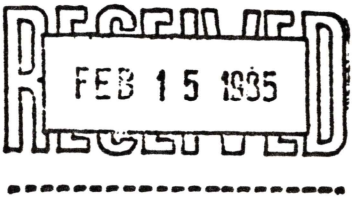
A COMMISSIONER, ETC.

O.F.A.V.A.S.

The Ontario Film and Video Appreciation Society

February 14, 1985

The Director
Ontario Film Review Board
1075 Millwood Road
Toronto, Ontario
M4G 1X6



Dear Ms. Brown,

The Ontario Film and Video Appreciation Society is submitting The Art Of Worldly Wisdom, Rameau's Nephew..., and Amerika (including the segment "A Message From Our Sponsor")for approval for distribution and exhibition in the Province of Ontario. Our Film Exchange license number is 308.

Kindly approve of same and advise.

Sincerely

David Poole

cc. Lynn King
Charles Campbell

This is Exhibit "A" *referred to in the affidavit of* DAVID POOLE *sworn before me, this* 23 *day of* April *19* 85

A COMMISSIONER, ETC.

67 Mowat Avenue #345 Toronto, Ontario M6K 3E3 Tel: (416) 860-0290

Ministry of Consumer and Commercial Relations — Theatres Branch

Ontario

or approval for distribution
he exhibition in the Province
f Ontario.

Board of Censors

SUMMARY REPORT

DATE: MAR 1 1985

PRESENT FOR DISCUSSION AND REVIEW

INITIAL WB MB CY K.S.

FILM TITLE: (as appears on screen)

THE ART OF WORLDLY WISDOM

COUNTRY OF ORIGIN:	DISTRIBUTOR:	NUMBER OF REELS/ MINUTES
CAN	OFAUAS	53 mins

ORIGINAL	☒	COLOUR	☒	35 mm	☐	FEATURE	☒
NEW VERSION	☐	BLACK & WHITE	☐	16 mm	☒	SHORT SUBJECT	☐
APPEAL	☐			8 mm	☐	TRAILER	☐
SUBTITLES	☐			VIDEOTAPE	☐		
DUBBED	☐						

STORY LINE:

FILMMAKER'S VIEW OF PROGRESSION OF LIFE.

This is Exhibit "B" referred to in the affidavit of DAVID POOLE sworn before me, this 23 day of March 19 85

A COMMISSIONER, ETC.

OBSERVATIONS/CONCERNS: SCRATCHED PRINT (R.I)

- CONCERN REGARDING UNDUE EMPHASIS ON CHILD'S GENITALIA

☐ Film falls within current Community Standards for:

☐ Normal Guidelines should be set aside to treat as:

- ☐ **Family** (Suitable for all)
- ☐ **Parental Guidance** (Advisory Classification)
- ☐ **Adult Accompaniment** (Restricted to Persons 14 & over unless accompanied by an adult)
- ☑ **Restricted** (to persons 18 & over)
- ☐ **Restricted Sex Film**
- ☐ Information Piece (see reverse for Info Piece)
- ☐ **Eliminations** (see reverse for eliminations)
- ☐ **Not Approved**

REASONS:

~~Behavioural~~ SCENES OF EXPLICIT SEXUAL ACTIVITY WITHIN CONTEXT OF THIS FILM DO NOT, IN THE BOARD'S OPINION, CONTRAVENE Community Standards but those specific scenes require a Restricted classification

ADMITTANCE RESTRICTED TO PERSONS 18 YEARS OF AGE OR OVER

Majority Decision - Board Members

INITIAL WB MB CY K.S.

Ministry of Consumer and Commercial Relations — Theatres Branch

Ontario

Board of Censors

SUMMARY REPORT

DATE: MARCH 1 1985

For approval for distribution and exhibition in the Province of Ontario.

PRESENT FOR DISCUSSION AND REVIEW

INITIAL AC MB. EB [redacted] K.S.

FILM TITLE: (as appears on screen)

RAMEAU'S NEPHEW

COUNTRY OF ORIGIN:	DISTRIBUTOR:	NUMBER OF REELS/ MINUTES
CAN	OFANAS	270 MIN

ORIGINAL	☑	COLOUR	☑	35 mm	☐	FEATURE	☑
NEW VERSION	☐	BLACK & WHITE	☐	16 mm	☑	SHORT SUBJECT	☐
APPEAL	☐			8 mm	☐	TRAILER	☐
SUBTITLES	☐			VIDEOTAPE	☐		
DUBBED	☐						

STORY LINE:

VARIOUS TABLEAUS JUXTAPOSED AS A VIEW OF LIFE

This is Exhibit ..... referred to in the affidavit of DAVID POOLE sworn before me, this 23 day of [redacted] 19 85

A COMMISSIONER, ETC.

OBSERVATIONS/CONCERNS:

☐ Film falls within current Community Standards for:

☐ Normal Guidelines should be set aside to treat as:

- **Family** (Suitable for all) ☐
- **Parental Guidance** (Advisory Classification) ☐
- **Adult Accompaniment** (Restricted to Persons 14 & over unless accompanied by an adult.) ☐
- **Restricted** (to Persons 18 & over) ☑
- **Restricted Sex Film** ☐
- Information Piece (see reverse for Info Piece) ☐
- **Eliminations** (see reverse for eliminations) ☐
- **Not Approved** ☐

Majority Decision - Board Members

INITIAL [redacted] [redacted]

REASONS:

Scenes of explicit sexual activity within context of this film do not, in the Board's opinion, contravene community standards.

Scenes of explicit sexual activity require Restricted Classification

[redacted] ASSISTANCE

Eliminations:

Information Piece:

"Explicit Sex"

Minority Position:

"Coarse language" — AC
AA — ~~for exhibition~~ — AC

Ministry of Consumer and Commercial Relations — Theatres Branch

Ontario

Board of Censors

SUMMARY REPORT

DATE: Feb. 18/85

PRESENT FOR DISCUSSION AND REVIEW

INITIAL: K.S. L.C. CY AC M.K.

For approval for distribution and exhibition in the province of Ontario.

FILM TITLE: (as appears on screen)

AMERIKA

COUNTRY OF ORIGIN:	DISTRIBUTOR:	NUMBER OF REELS/ MINUTES
CANADA	OFAVAS	3/158

ORIGINAL	☐	COLOUR	☐	35 mm	☐	FEATURE	☐
NEW VERSION	☐	BLACK & WHITE	☐	16 mm	☐	SHORT SUBJECT	☐
APPEAL	☐			8 mm	☐	TRAILER	☐
SUBTITLES	☐			VIDEOTAPE	☐		
DUBBED	☐						

(With black & white TV & film shots)

STORY LINE:

The destruction of AMERIKA (& KANADA) through its cultural degradation.

This is Exhibit "D" referred to in the affidavit of DAVID POOLE *sworn before me, this* 23 *day of* [signature] *19*85

.....
A COMMISSIONER, ETC.

OBSERVATIONS/CONCERNS:

This film would be approved and classified as "Restricted", with the following eliminations - see over.

NB. Film also approved for distribution, if these eliminations are met.

☐ Film falls within current Community Standards for:

☐ Normal Guidelines should be set aside to treat as:

Family ☐ (Suitable for all)

Parental Guidance ☐ (Advisory Classification)

Adult Accompaniment ☐ (Restricted to Persons 14 & over unless accompanied by an adult)

Restricted ☐ (to Persons 18 & over)

Restricted Sex Film ☐

Information Piece ☐ (see reverse for Info Piece)

Eliminations ☐ (see reverse for eliminations)

Not Approved ☒

Majority Decision - Board Members

INITIAL: M.K. [illegible]

REASONS:

Explicit depiction of sexual activity throughout

Undue emphasis on human genital organs.

Eliminations:

	MINUTE	
Reel I	At 43 & 44 -	Graphic fellatio.
el II	At 37 -	Close-up and prolonged view of male genitalia.
	" 38 -	2 shots of graphic fellatio.
	" 39 -	All scenes of rear penetration.
	" 42 -	All scenes of male masturbation.

Information Piece:

Minority Position: Agree with all cuts except #37 Reel II - Close-up and prolonged view of male genitalia.

Chris Yost.

INIT

O.F.A.V.A.S.

The Ontario Film and Video Appreciation Society

20 March 1985

This is Exhibit "E" referred to in the affidavit of DAVID POOLE sworn before me, this 23 day of April 1985

A COMMISSIONER, ETC.

Mary Brown
Director
The Ontario Film Review Board
1075 Millwood Rd.
Toronto, Ontario, M4G 1X6

Dear Ms. Brown,

Pursuant to the Theatres Act we are submitting an appeal of the Board's decision on the film Amerika, dated 18 February 1985. You now have the film at your offices. We understand that there is no fee for the appeal as this is a Canadian film.

We are enclosing, as a part of our appeal, for your reconsideration, the following documents:

1. Analysis: A Message From Our Sponsor by Al Razutis, May 1981. 28 pages.
2. Resume for Al Razutis, 7 pages.
3. Filmography (16 mm) for Al Razutis, 3 pages.
4. Amerika, information on the film, 3 pages.
5. Critical Perspectives on Vancouver Avant-Garde Cinema 1970 - 83 by Al Razutis and Tony Reif. Published in the catalogue for the exhibition Vancouver: Art and Artists, at the Vancouver Art Gallery 1983. Published by the Vancouver Art Gallery. 14 pages.
6. Recovering Lost History, Vancouver Avant-Garde Cinema 1960 - 69 by Al Razutis. Published in the catalogue listed above. 14 pages.

We ask that you now approve the film Amerika in its entirety and advise us forthwith. We wish to begin distribution and exhibition of the film beginning 1 April 1985 and appreciate your earliest decision on this appeal.

Sincerely,

Cyndra MacDowall

Cyndra MacDowall

enc:

67 Mowat Avenue, #345, Toronto, Ontario M6K 3E3 Tel: (416) 860-0290

CRITICAL PERSPECTIVES ON VANCOUVER AVANT-GARDE CINEMA 1970–83

Al Razutis, Tony Reif

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Avant-garde film of the seventies saw an initial dispersal and fragmentation of earlier influences and practice. Lyrical, synaesthetic, and mythopoetic film found itself in the minority, subordinated to a growing interest in consolidating formalisms and implanting definite shapes to the work. The *structuralist* film enterprise was predicated on idealized conceptions of the cinematic apparatus. Structuralism employed strategies of formal reduction, created paradigms of forms and rule-governed procedures, and invoked analytical judgements towards a definition (of cinema) that is hermeneutic in origin. Thus, a personal and diaristic film form (of the kind found in Gerry Gilbert's work, and later Gordon Kidd's) was less evident than its structural-minimalist counterparts (Rimmer, Tougas, Gallagher) or its poetic-structural-synaesthetic (hybrid) counterparts found in the work of Razutis and Lipskis. Many filmmakers shared a predisposition for inconoclasm and counter-culture. Razutis' inconoclastic practices emanated in the late sixties (and have been acknowledged in the sixties' essay); a major contribution in the seventies' developments of mythic and iconoclastic cinema is evidenced by the films of Byron Black.

Cinema was by and large the most important audio-visual art form in Vancouver during the seventies. It overshadowed video and appropriated many video processes within its development. The video-film hybrids of the seventies were an attempt to extend synaesthetic technology and form beyond more antiquated (optical printing) methods and to counter the pre-eminence of structural cinema. However, the most significant gains in the seventies came from strategems directed towards a more socially-oriented practice of media critique and deconstruction. The films of Kirk Tougas, Tom Braidwood, and Al Razutis were exemplary of the political avant-garde. In effect, there were many avant-gardes operating within Vancouver during the seventies. Some processes terminated by the mid-seventies; some directions continued into the eighties. An irreducible plurality existed in both the work and ideology of the seventies.

A.R.

DEPARTURE FROM THE SIXTIES: DAVID RIMMER

By 1971, Gary Lee Nova had virtually discontinued filmmaking. Keith Rodan, after his 18-film retrospective at the Vancouver Art Gallery, left for New York. David Rimmer also temporarily relocated to New York (in 1970) and it was there that his work was promptly discovered by Roger Greenspun *(The New York Times)* and Kristina Nordstrom *(The Village Voice)*. After exhibitions at Millenium and Film Forum, Rimmer was accorded critical acclaim, and his reputation in experimental film rose dramatically.

While in New York, Rimmer shot footage for a film entitled *Real Italian Pizza* (1971). He utilized a stationary camera (shooting through a window) and varied this view slightly by shooting scenes from several floors of his studio building (and with attendant variations in lens focal lengths). The street action in front of "Tom's Real Italian Pizza" was subjected to additional time compression (pixillation) and expansion (step printing or slow motion) as a formal response to the actions themselves.

The film represents Rimmer's emerging interest in episodic construction; the compression of time (September 1970 - May 1971) is revealed in sample episodes. Episodic demarcations are largely accomplished by fade-out, fade-in gestures of by black leader "spacing." *Real Italian Pizza* is also an essay in structured voyeurism: the action is always seen from a distance (through a window) and is qualified by both a funk soundtrack and formal interpretations.

On his return to Vancouver in 1972, Rimmer completed *Fracture* (1973), *Watching for the Queen* (1973), and *Canadian Pacific I & II* (1974 and 1975). *Fracture* was based on an 8 mm home movie, which provided the raw material for the construction of narrative that followed. Rimmer's propensity for structuring narrative and for setting in motion the question of viewership and meaning remained a dominant interest in *Watching for the Queen*. *Canadian Pacific I & II* represent the termination of his previous (stock-footage) interests and a return to landscape and poetic sampling of events in time. Both are shot from a fixed window perspective; the rectangular frame is given importance by an inside (window) frame within the screen's boundaries. The complementary films reveal Rimmer's ongoing interests in horizontal motion (as foreground) and the scene as unifying element of construction.

By the mid-seventies, Rimmer felt that he had exhausted his "materials" and he left several projects unfinished. Rimmer's approach to both structural issues and materialist concerns (the physical and perceptual materials of the film medium) was predicated on the joining of conceptual models with "pro-filmic facts." The "joining" was usually accomplished by using home-made rear-projection technology (a kind of primitive optical printer)[1] and the pro-filmic facts were usually of a stock-footage nature. Rimmer's interests did not extend to the construction of synthetic technology nor the collection of large amounts of stock footage. His processing work directly derived from the immediate realization of the concept and his stock-footage materials were usually extremely short (and subject to loops or freeze-frame expansion). Thus, it is hardly surprising that he discontinued his structural filmmaking by the mid-seventies. The conceptual framework he employed had limits, and he terminated work before it became redundant.

The single exception to Rimmer's departure from structural film is *Narrows Inlet* (1980). *Narrows Inlet* situates the viewer within the paradoxi-

Vancouver: Art and Artists catalogue for the exhibition at the Vancouver Art Gallery 1983. Published by the Vancouver Art Gallery.

David Rimmer *Watching for the Queen* 1973

cal meeting of nature and machine/eye. The fog-bound natural environs of a B.C. inlet are photographed in time-lapse using a fixed camera mounted on a boat that is anchored in the inlet. The tidal movement (of the camera-boat) produces a staccato rhythm that mimics saccadic eye movement. Surprisingly, *Narrows Inlet* is contemporary with Chris Welsby's *Estuary* (1980) which also features a camera mounted on a boat (and four-second samples of time exposures).

In 1979, Rimmer completed a remarkable documentary "portrait" of a friend and cultural legend, Al Neil. The film is episodic and interprets the subject matter intimately and with somber emotional tones. Rimmer engages to find the "mythic location" and spinal column of Al Neil's world from an impassioned and patient perspective. He juxtaposes long takes (from a set camera), black leader, and energetic passages of montage. The context significantly informs the expression; there is a relaxing of formal concerns. The film's intimacy is provided by an honest subjectivity that allows Al Neil time to reveal himself in contrasting states of emotion, engagement, and detachment.

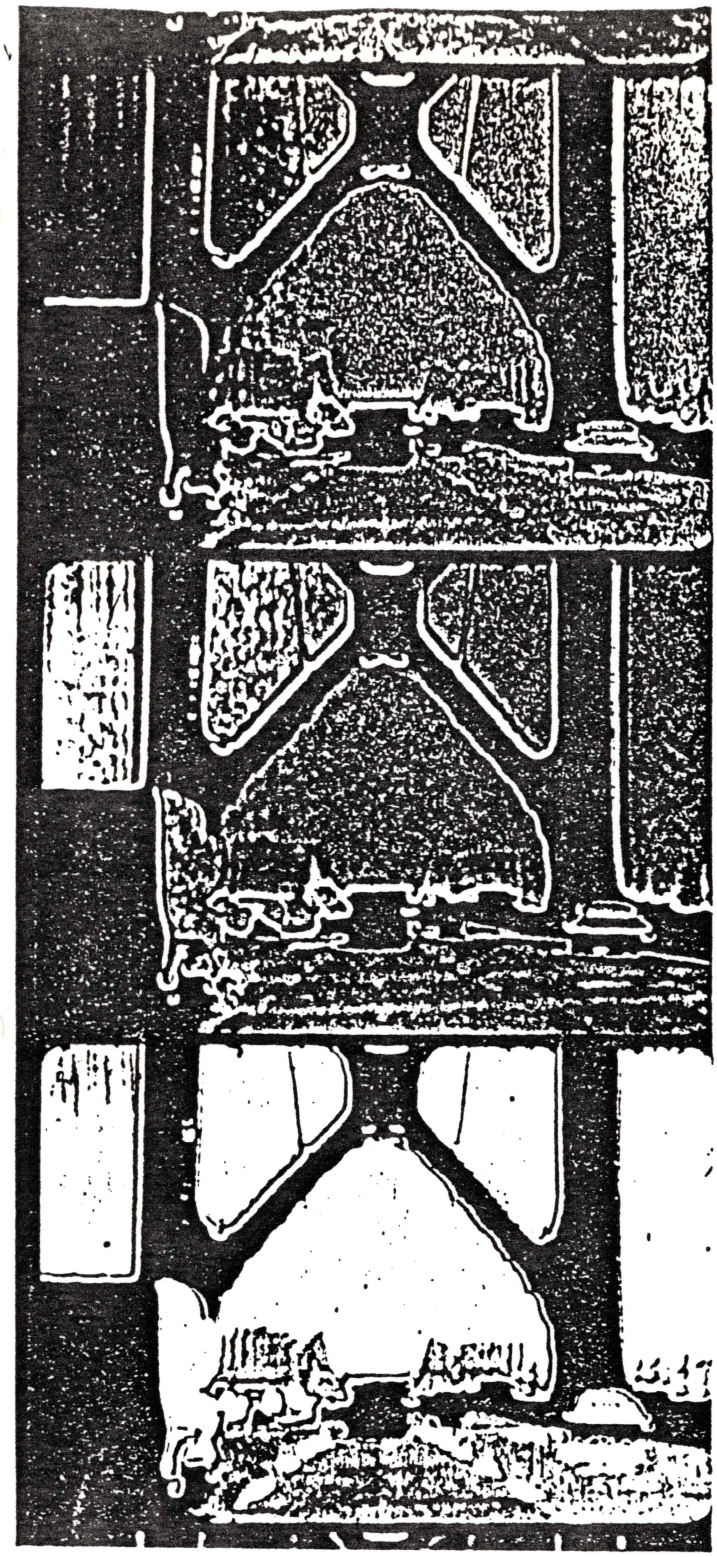
A.R.

AL RAZUTIS: VISUAL ALCHEMY

The early seventies represented a time of prolific output (in the three media of film, video, and holography) for Al Razutis; it was a period of aesthetic and technological invention and a pushing forward of formal parameters. Razutis worked primarily alone, outside institutional contexts (including Vancouver's fine-arts community). His multi-media work tended to align aesthetics with knowledge, technique with invention, metaphysics with physics. Immanuel Kant's credo ("In order to *know* an object, I must be able to prove its possibility, either from its reality, as attested by experience, or *a priori* by means of reason") could be applied to Razutis' integration of knowledge and art, but with the notable addition, in the late seventies, of political and ideological concerns. What Razutis desired to "know" was an aesthetic practice that used transcendental signification in personal and societal transformations. This transcendental function was not derived from Oriental cosmology, but fixated on the fusion of science and alchemy. Modern day "alchemy" to Razutis seemed analogous to an artistry that invoked imagination (the knowledge and experience of it) to reach beyond normal experience. If empirical knowledge (science) is predicted on synthetic judgements (arrived at through the data of experience), then Razutis felt that aesthetic knowledge could be gained through the data of visionary experience and the developments of new technologies (of the psyche). The development of the optical printer had been for him the creation of a machine to directly manifest "dreamwork"; new technologies of the psyche could be created in film form, since language and expression constituted "technologies."

In 1971, on the basis of a CFDC grant, Razutis completed the shooting (with Tony Westman as principal cinematographer) of an experimental-dramatic narrative, *The Beast*. Razutis describes the film as a "dreamspeak narrative of sorts . . . myth making and myth mocking." After numerous problems in post production, *The Beast* was finally completed in 1982.

In 1972, Razutis began to experiment with colour video synthesis at Evergreen State College (Olympia, Washington). These experiments were unique to Vancouver video, since B&W was "state of the art" and videosynthesis was largely unknown.[2] The Evergreen experiments resulted in "hybrid" films which combined film and video techniques and could be distributed in either film or video. The films completed in



Al Razutis *98.3 (Klz Bridge at Electrical Storm* 1966-73

1972–73 (and many experiments remained incomplete) included: *Software* (1972), *Vortex* (1973), *Watercolour/Abstract* (1973), *Aurora* (1973), *Tyreworks* (1973), and *Synchronicity* (1973), a collaboration with Audrey Doray and Barry Traux. The videosynthesis experiments involved generating abstract imagery, reprocessing representational images, and creating film-video pieces using biofeedback techniques. This work would (in 1975) result in the construction of another technology unique to Vancouver: the videosynthesizer.[3]

Razutis completed five films in 1973 which were indicative of his plural formal interests. *98.3 (Klz Bridge at Electrical Storm* is a dazzling synthetic journey across a suspension bridge which engulfs the viewer in video-synthetic "electrical storms" and subliminal sound broadcasts; *Le Voyage* and *The Moon at Evernight* explore image cycles, repetition, aleatory combinations, and image-less durations that are structural counterpoints to the mythopoetic image and verbal fragments; *Visual Alchemy* (cinematography by Westman) combines visual documents of lasers and holography and Jungian-poetic verbal passages to comment on the symbolic relationship between holography (the "opus") and alchemy; *Méliès Catalogue* portrays the early creation of films as a dream vision captured on "burning" celluloid. The dominant motifs within these works are image condensation and abstraction, flash-frame punctuations and lightning (as leitmotif), black leader (image-less) passages, and complex sound-track constructions.

Razutis' use of structures and shape was usually configured around affective and psychological strategies; there was little evidence of a predisposition for mathematical or rule-governed procedures. As contrasted to Rimmer's structuralism, Razutis' use of patterns and forms was motivated by rhetorical or poetic considerations that employed the construction of spatial and temporal "figures" in a background continuum that was analogous to "void." His image construction employed the exacting use of optical printing and synthesizing technology which, as in the case of *Bridge at Electrical Storm*, was conducted one frame at a time until a maximum amount of complexity and control was achieved.

Visual Alchemy alludes to his developing interest in an aesthetic practice that joins psychic and technical discoveries. The technical discoveries that Razutis made in holography included the development of a holographic "motion picture" cylinder[4] containing an animated (rotating) holographic image. He applied himself towards the design of a holographic motion-picture projection system, but was unable to gain support from the National Film Board (to which it was submitted). Subsequently, he directed his efforts towards the creation of a thirty-piece holographic art exhibition, *Visual Alchemy*, which in 1977, organized by Elisa Anstis and Martin Grove of the Burnaby Art Gallery, went on cross-Canada tour.

Visual Alchemy was also the name of a studio and stock-footage library established by Razutis. The library was the source of his *Visual Essays: Origins of Film* which by 1976 included *Sequels in Transfigured Time* and *Ghost: Image*, in addition to the already-completed *Méliès Catalogue* and *Lumière's Train (Arriving at the Station)*.

Sequels in Transfigured Time is a return to the films of George Méliès (1861–1938), as sequel to the *Catalogue*, and presents a poetic interpretation of early cinematic vision and imagination. *Ghost: Image* explores the tradition of "fantastic" films that included Dada, Cubism, Surrealism, German Expressionism, Poetic Realism and concludes with the classic horror genre.

Al Razutis *Ghost Image* 1976

In 1976, Razutis completed *Portrait*, a pointillist study of his daughter based on Carol Aellen's 8mm footage; macro-rephotography was used to increase detail and grain. The same year, he also completed *The Wasteland and Other Stories*, and *Cities of Eden*. These two films added to a longer work in progress, *Amerika*, which, as a thirteen part compilation film, draws on the myths and image systems of the post-industrialized world.

By 1977, Razutis' combined work in film, video and holography had brought him to exhaustion and bankruptcy. He moved to the South Pacific. In 1978, he returned to Vancouver and took a teaching position at Simon Fraser University. There he set about constructing a film program that would exhibit a blend of experimental film production, film theory, and contemporary technologies for film practice.

His interest in political forms of experimental filmmaking intensified in 1978 80. In 1980, he published a manifesto on "Cinema Arts" that denounced the Canada Council's policy of generating a secondary "independent" film industry at the expense of arts funding, and he participated in the founding of Cineworks (a film production co-op).

Razutis' late seventies' film work (e.g. *The Wildwest Show, A Message from our Sponsor, Motel Row)* turned to the issues of media language and ideology. His work combined textual construction[5] with formal subversion (subversion of signification, meaning and styles) and extended the practice of filmmaking into the realm of pragmatics and cultural protest. It is therefore hardly surprising that by the early eighties his work found itself less and less involved with "fine arts" interests.

A.R.

AL RAZUTIS: THE LANGUAGE OF VISION AND CRITIQUE

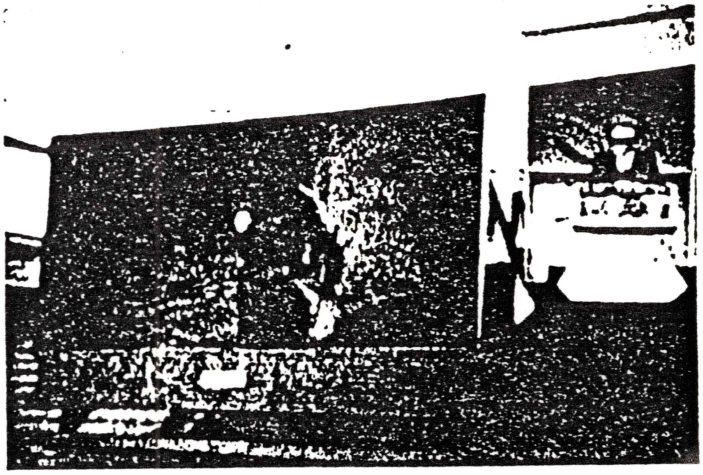
Razutis' two major film projects of the decade, *Amerika* and *Visual Essays: Origins of Film*, offer the most compelling evidence of his concerns and their achievement.

There can be no doubt that *Amerika* is one of the major works to emerge from Vancouver and one of the most important cultural statements of the North American experimental film movement. Analysis of this film is still problematic, however, since it remains unfinished and subject to further change. Here is Razutis' description:

> "A feature-length experimental film which was created one reel at a time to function as a mosaic that expresses the various sensations, myths, landscapes of the industrialized Western culture . . . The predominant characteristic of the entire film is that it draws from existing stock-footage archives, the iconography and "memory banks" of a media-excessive culture, to locate its subject. The techniques employed in rendering the various fragments vary from video synthesis, optical matte effects, audio-synthesis, time-lapse cinematography, to the more conventional 16mm forms of representation."[6]

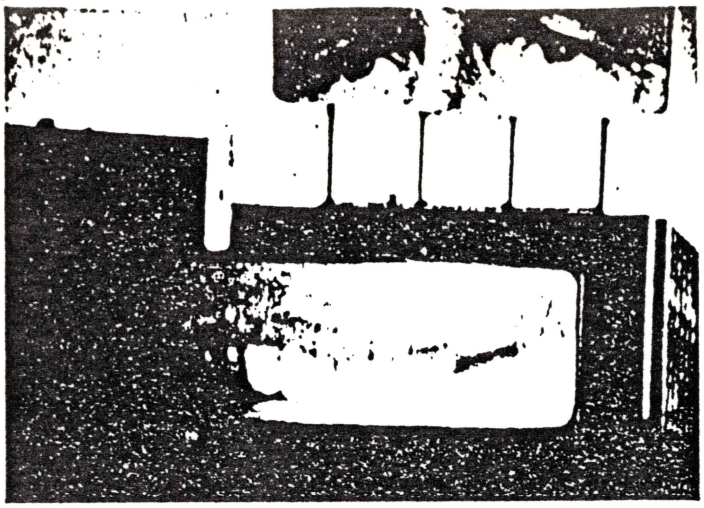
In another essay he states his artistic credo:

> "I have attempted to fashion work in the spirit of revolution and creation . . . Here, form and content are inexorably linked; here also, popular cultural-political iconography is turned against itself, allowing the viewer, perhaps, to discover the nature of our collective myth making and how it has rendered many of us "senseless."[7]



Al Razutis *Amerika: The Wildwest Show* 1980

At the perceptual level, *Amerika* magnificently reasserts the sensuousness and malleability of the motion picture image. Razutis sets out to deny, break through, the narrow range of expression of film used as "faithful" (literal) documentation of "reality" (the surface of things). Films like *98.3 KHz (Bridge at Electrical Storm* reassert film primacy through unreal or synthesized colour and motion, and return to appearances the wonder and surprise of aesthetic perception. Their underlying theme is the relativity of all perception and the ironic gap between official codes of representation and any personal, liberated response. *Amerika* consistently calls into question the mass image and its meaning within its ordinary, mass-media context — indeed its ability to convey any meaning beyond the myths co-opted and perpetuated by corporate society *(The Cities of Eden, The Wildwest Show, A Message from Our Sponsor, O Kanada!).* Razutis sets off these dissections of dominant imagery against personally-generated images dealing with further aspects of consumerism, such as holiday travel (*The Wasteland and Other Stories . . .)* and sexual recreation *(Motel Row 2).*



Al Razutis *Amerika: The Wildwest Show* 1980

And he balances these empty pleasures of the moment — pleasures reduced to visual signs which he nevertheless fills with a restless critical energy — against apocalyptic visions of decay, destruction, emptiness and ruin *(Atomic Gardening, Motel Row 1* and *3, Terminal Cityscapes).*

Razutis' second multi-film project, *Visual Essays: Origins of Film,* comprises a critique of selected "moments" in the early development of cinema. The essays also constitute a re-creation, in the aesthetics of current avant-garde film practice, of the experience of wonderment these works must have offered their audiences. Each essay, as Peter Chapman points out, "is structured around a distinct set of optical printing and collage techniques so that every one embodies a 'look' which becomes the film's central strategy and metaphor."[8]

The first essay, *Lumière's Train (Arriving at the Station),* deals with "cinema itself: an apparatus of representation, wherein fact and fiction are recreated." The "fact" — Lumière's one-shot of a train pulling in, and the "fiction" — clips from Gance's *La Roue* and a Warner silent featurette, *Spills for Thrills,* are both deconstructed, and, as individually modified frames of film, re-yoked to the image track (the celluloid running through the projector). "The exposition and form of the film is closely tied to the tradition of cine-structural poems which foreground the actual materials of the medium (light, dark, form as shadow-projection of the cinematic apparatus)."[9] The principal analytic procedures are rapid alternations of positive and negative versions of the original frames (which, combined with flash frames, induce anomalous colours through afterimages) and frame-by-frame reconstruction of motion (sometimes realistic, often anomalous). Silent cinema of the twenties had developed a set of conventions of mimesis to construct events, arouse expectations and generate spectacle; by boosting the kinetic energy locked in these film clips, Razutis comments on the limitations that this "language" of narrative cinema imposed on the medium.

Méliès Catalogue, a compendium of "primitive" film fantasy and magic, returns to examine an earlier aesthetic. Its structure is based on collage since Méliès was the first to exploit filmic discontinuity: he discovered that by stopping the camera mid-scene he could make people and objects disappear in a puff of smoke. The chemical instability of nitrate stock, generally used for 35mm until about 1950, is implied in the film's dominant visual motif: each short clip is "burned through" by the next. This constantly bubbling, fiery series of superimpositions is a homage to the "magic" alchemy of the cinematographic process itself, and to Méliès' transformation of crude music-hall acts into "a dream-like terrain."

Sequels in Transfigured Time, Ghost: Image, and *For Artaud* are the three further *Visual Essays* completed to date. The qualities of fantasy, invention and vision in the films they quote from continue to provide a basis for image transformations. Yet, as in *Amerika,* this process of transformation is allied to a critique of history: here, the cultural history of the early twentieth century as expressed in its most powerful image-creating medium.

For Artaud (1982) is the latest, most elusive of the *Visual Essays.* Razutis returns to ground explored in films that deal with psychic tension through subliminal and archetypal imagery, *Le Voyage* and *The Moon at Evernight.* Here, however, he is placing these concerns in a specific cultural context, cinematic "expressionism and the tradition of Gothic horror."

In that the codes of meaning perpetuated by the institution of "cinema," and the particular images it has produced, still haunt our collective (un)consciousness, the *Visual Essays* complement the concerns of *Amerika.* They are constructed in an analogous way: documents of mass consciousness and individual perception are reformed into a commentary that transcends intellectuality to offer a synthesis that combines language with imagination.

T.R.

BYRON BLACK: THE METAPHYSICS OF PERFORMANCE

The son of an American Colonel, Black has an academic background in linguistics — he has studied Arabic and speaks Spanish and Japanese — but, as he explains it, a "lust for motorcycle racing" ruined his academic career.

Black's other passions include pantomiming to Spike Jones records, photography, filmmaking, and meditation. (Homocros directly informs his later work.) He began teaching himself filmmaking in 1965; by the time he arrived in Vancouver (in 1970, as a draft-resister) he had produced about five hours of film in various stages of completion, including diaristic material, a number of nature studies, and a few political newsreels. The influence of Brakhage was noticeable in the shooting and editing; like Emshwiller, he was drawn to wide-angle lenses, hand-held camerawork, and a "cosmic" point-of-view.

In 1972 Black completed his first feature, *The Master of Images.* At the same time he was developing a synthesis of media forms — including film, slide projections, music, and later video — in the context of performance, with Black himself as the Master of Images. The aim, as he put it, was to create a sort of "experimental vaudeville" and "to break the film out of the frame."

Although its expression has varied, the aim of spiritual liberation has always been uppermost in Black's work as in his life — but the model of liberation he proposes in *The Master of Images* can be seen as a kind of western Zen for media junkies. In his assault upon the North American consumer mentality Black enlisted the counter-culture, using its values (and their ultimate failure) as a springboard to move through cosmic

humour and paradox towards the realization of divinity.

The Master of Images is organized around the idea of improvised performance as a spiritual technique. Psychodrama had been a basic of experimental theatre in the sixties (The Living Theatre, etc.) but without self-proclaimed spiritual context; it was also a technique used by religious groups inspired by the example of Gurdjieff. And the idea of the witness who simply observes the personality's thoughts and actions without comment is a Buddhist concept. In *The Master of Images*, Black adapts these procedures to the movie-within-a-movie format. He himself impersonates the bald headed guru in whose presence the actors interpret roles that project their off-screen personalities.

The commercial failure of *The Master of Images* must have prompted Black to give his second story feature about "our image pestilence" a somewhat less didactic and more bizarre manifestation. Shot again in 16 mm (intended for blow-up to 35 mm), *The Holy Assassin* (1972–74) takes post-hippie psychodrama to the point of cosmic absurdity. The through line this time is an obscure plot concerning a renegade space traveller (Black) who, passing from dimension to dimension, "is shipwrecked on a primitive young planet called 'Earth' during a wild neutrino storm . . . Forced to engage in fierce psychic combat with warlike natives, the alien tells of his desperate attempts to escape certain planetary doom, in rapid-fire collage style."[10] The film was group-improvised under conditions in which real emotional conflicts were tempered by fantasy, by a willingness to play with roles, put on new identities.

In the film's prospectus Black enlarges on his approach to the "Theatre of Consciousness":

> "The building of the film is basically an organic process, in that the film at any given point is a "visual script," and shooting/storyline is based on it. Plot development, shooting, editing and sound track building occur in an ecology of living and filming. As the film progresses, the basic grid of events is filled out, and new shots and scenes are interwoven with existing ones. Actors and technical personnel are often inspired with new story, direction or acting ideas, and this intuitive energy is directed into the film flow. The idea is to use the dynamics of psychic and temporal interaction of a group of people to create an art form which is both documentary and fictional — often simultaneously."

What is so piquant, and even poignant, in Black is the interplay/interpenetration of the great American tradition of huckster-promoter-confidence man and the serious aim of manifesting enlightment: the shaman as showman. The game he plays with his life and in his work balances ego-gratification against ego-mortification in a dualism which is completely symptomatic, as he sees it, of the human condition, and the best way of dealing with it. Thus in *The Holy Assassin*, Black the spaceman-cameraman sometimes appears on the edge of the frame as he shoots, joking, over-emoting and/or interpreting for us benshi-style[11] — a comment on the "hollowness" of the story.

Black considers the 5.9mm extreme wide-angle lens as "to some extent, my standard lens . . . a most natural lens. In terms of the field-of-vision it approximates the human eye and frames itself basically, in that you can hold the camera up and away from your eyes and have it framed properly. And the hand-held camera speaks for itself — it's a member of the people interacting — it's trying to make living theatre with a dead medium, a mechanical medium."[12]

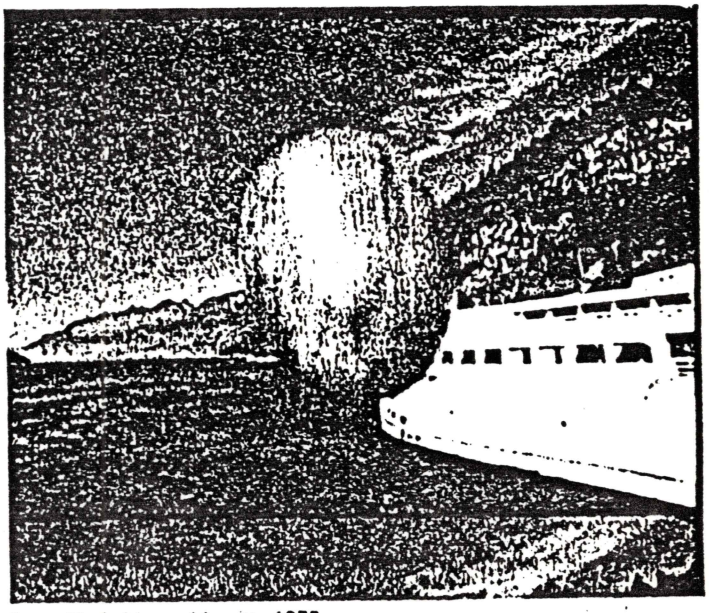
Black's editing also confounds our expectations of narrative structure and consistency. The normal codes of linearity become the Newtonian special case in a narrative universe of Einsteinian relativity. Asynchronous image-sound montages substitute simultaneity, uncertainty, and multiple points-of-view for the more conventional cinematic space-time relationships.

The synthesis of choreographic camera and mise-en-scène, and cubistic construction, makes for startling, manic, and humorous cinema. Black shines in performance, where he pursues his penchant for word games, puns and paradoxes through a non-stop improvised narrative, all the while controlling and responding to the image-sound flow from overlays of slide and film projectors, video and audio cassette. As a performer, Black has often assumed the lecturer's pose. In *The Colour Bar and the Chromosexual* (1976), he spoofed the psychiatric jargon of sexual deviance ("chromatic aberration") by constructing a lengthy discourse based on puns linking the scientific description of light and its religious metaphors.[13]

In 1977, Black spent five months in Japan, Thailand, and the Philippines on a Canada Council grant. This first "Asian shooting spree" resulted in two completed half-hour films.

Flor Finu Pilipina (1978) is a "romantic documentary" on cigar-making in Manila; it incorporates a number of amusing personal reflections and asides but at times falls uncomfortably between the sponsored film format it half parodies and the committed documentation of southeast Asian realities that occupies his later video work.

Mango Magritte (1978) is much more interesting, an all-out synthesis of the Over Baron's transcendental jesting and worldly pursuits. The narrative is an "epic quest" to track the "flying fruit of the tropics" across the Pacific to Vancouver and around the lazy eight of infinity. Along the way, Black pokes fun at science films, travelogues, Maoist propaganda and the NFB, among other targets. The film's complex



Byron Black *Mango Magritte* 1978

continuity reflects Black's performance work. Dual-mono narration by the MwaRay Brothers conceptually anchors the radical space time jumps in visual coherence. Puns and paradoxes sew up a word/image montage whose elaborate wit approaches Joycean heights. But the fixed deliberation of the film medium mitigates the sense of spontaneous inspiration (always teetering on the brink of self-parody/self revelation) that lightens his performances. Black packs film to its limits, indicating a growing disenchantment with cinema as a medium flexible and fast enough (not to mention cheap enough) to contain his art.

For the past three years, while teaching video and photography at an art school in Osaka, he has worked in ½" video, completing a series of tapes destined for "B-84," his proposed art conference. Shot mostly in the rural Philippines and Thailand and among Karen freedom-fighters, this recent work takes a humanist, anti-authoritarian political stand without entirely forsaking its maker's love of irony and humour and his spiritual convictions. The strength of the social vision draws upon the same personal energy and transpersonal ideals that have graced his work from the beginning.

T.R.

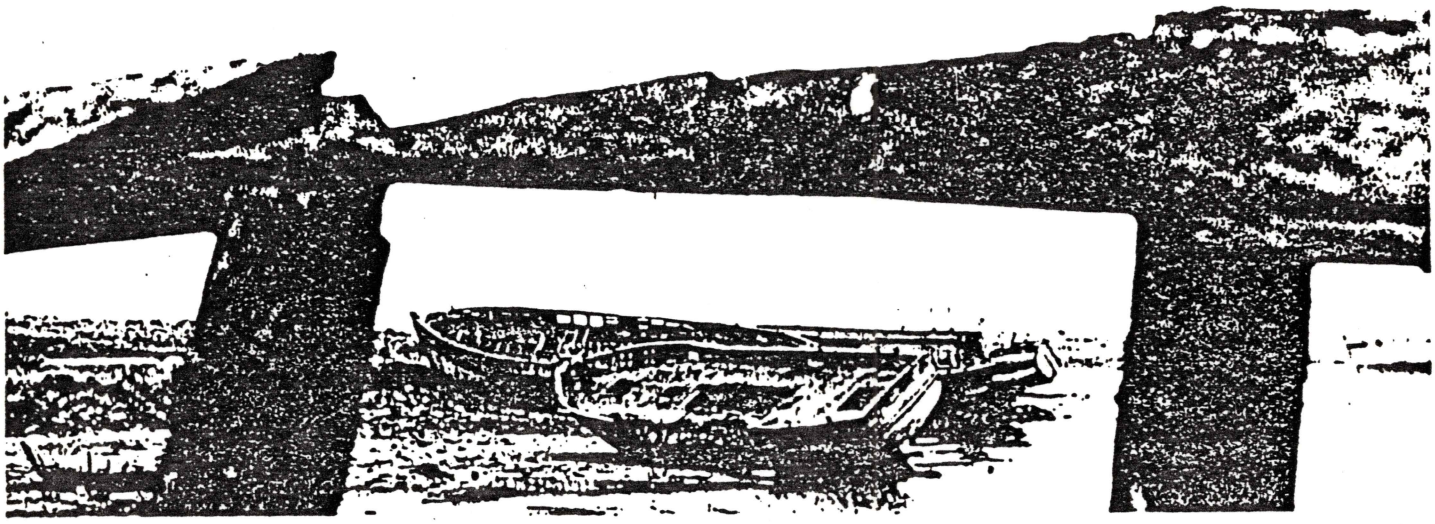
THE POLITICS OF STRUCTURALISM: KIRK TOUGAS AND TOM BRAIDWOOD

Kirk Tougas figures prominently in any discussion of Vancouver avant-garde cinema. His interests have spanned careers in criticism, administration and cultural activities, filmmaking, and, more recently, political activism.

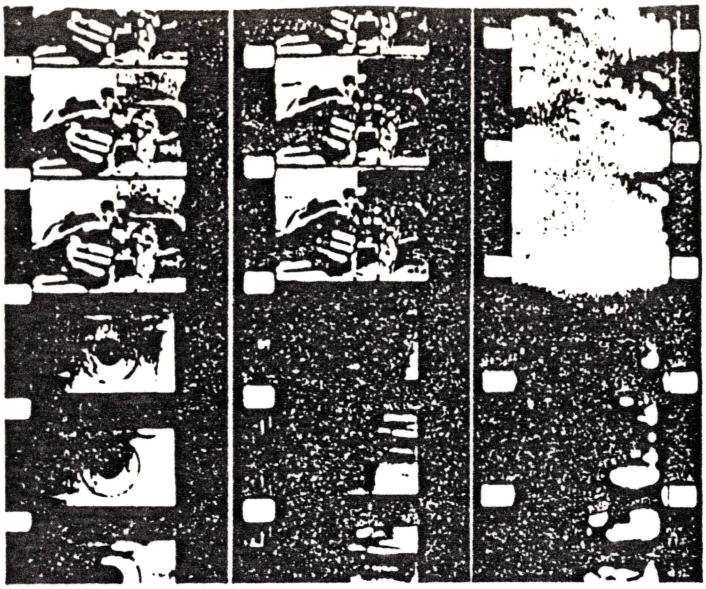
In the mid-sixties, Tougas discovered European cinema and an intellectual culture that (in his words) "treated film as high cultural artifact." When Tougas returned to Vancouver, he worked as a critic for the *Ubyssey* and the *Georgia Straight*, and it was this latter experience that first put him in touch with Vancouver avant garde cinema. His interests in making films were largely informed by an "evolution from poetry to film" that would reveal, in cinematic terms, the creative structure underlying poetry and literary thought. His early frustrations with a lack of cultural criticism and world view (the Vancouver of the sixties) led him to found the Pacific Cinémathèque Pacifique in 1972, and he would hold the title of director until his resignation Dec. 31, 1979.

To Tougas, criticism and theory heralded "new directions in filmmaking," and their new direction could also take the form of an intellectual response to synaesthetic film of the sixties. His first film, *Far From Quebec* (1971), was described by Tougas as "an inquiry into relationships — political, social, aesthetic, perceptual — the relationship between Vancouver, Quebec, Brittany . . . the relationship between image and sound, between projection and spectators."

The Politics of Perception (1973) continued the examination of cultural time begun in *Far From Quebec* and "the human relationship with technological systems, information environment, entropy/negentropy . . ." The film is based on repeating segments of a violent 50-second trailer (for the Charles Bronson picture *The Mechanic*) in a state of continual deterioration. Over the 33 minutes, the image quality constantly deteriorates, increasing in contrast, and the sound track loses clarity until both picture and sound assume the status of "noise." This steady progression towards a white screen and "white noise" audio is maddening for some viewers because it relentlessly tests their culturally-induced habits of "plot development," "character," and "resolution." The point of exhaustion (of materials and "content") that the film implies is a phenomenological reduction that is explained by Tougas' conception that "film is a process where we take shadows and modulate an artificial sun (by intervening celluloid patterns)." *The Politics of Per-*



Kirk Tougas *Far From Québec* 1971



Kirk Tougas *The Politics of Perception* 1973

ception is (in Tougas' view) akin to viewing "the history of photography and representation in reverse . . . slowly." He is also mindful that, while it leaves room for people "to think," it also allows room for people "to snap." (At Oregon State a viewer attacked the screen while the film was being projected.) The "mechanic" Bronson, as looped protagonist of destruction, is a metaphor for mechanized perception, photomechanical reproduction, and mechanized cultural production and consumption.

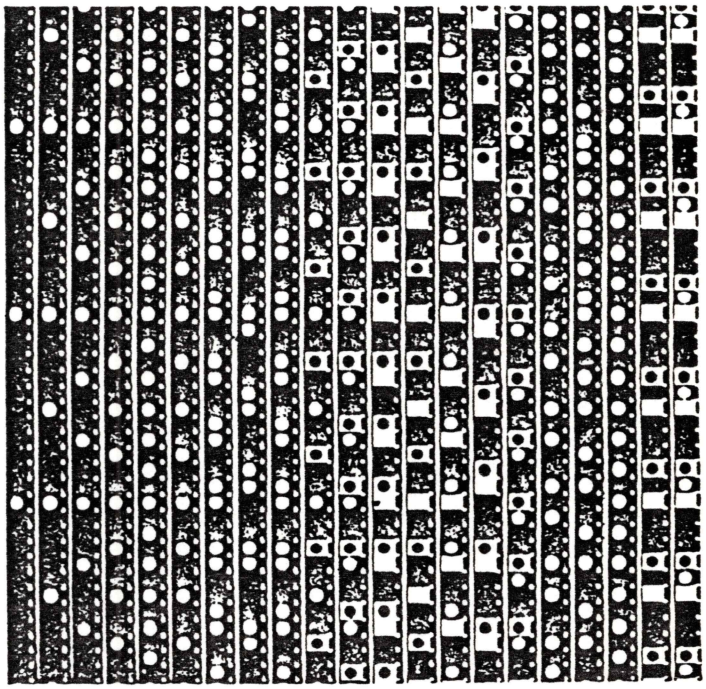
Tougas' view of film as a totally linguistic process, with "structure . . . simply a component" of this process, becomes clearer with his companion piece to *The Politics of Perception*, *Letter From Vancouver* (1973). *Letter From Vancouver* features a deconstruction of the rhetorical figurings of media, and implicates the influence of Godard on Tougas' work. The stock footage that comprises its first section (e.g. Lucille Ball, *The Avengers*, *Bonnie and Clyde*, *The Flying Nun*) are synchronic slices of the 1973 populist media. The film is, in Tougas' words, an "imagistic meditation of mass culture." It reveals correspondences between violence, power, sexuality, and media persuasion. The correspondences rely on the viewer's ability to "read" images. The silence is punctuated by four sections that offer the seventies' Liberal Party motto: "Canada stand together, understand together" in ironic counterpoint to the dominant media's other message: propaganda sells lifestyles. Marshall McLuhan had once posited: "The propaganda value of this simultaneous audio/visual impression (movies) is very high, for it standardizes thought by supplying the spectator with a ready-made visual image before he has time to conjure up an interpretation of his own." The denial of sound and the denial of action in *Letter From Vancouver* therefore is a strategy aimed at placing the viewer in a critical position vis-à-vis mass culture.

As a metalinguistic (i.e. the language of myths) essay, *Letter From Vancouver* offers formats for deconstruction, but never precipitates an actual deconstruction of the image systems. *Letter From Vancouver* (Part Two) removes the traditional representational elements (the anthropomorphic image) and returns us to the basic binary state of "figure" and "ground" or (in Tougas' terminology) the "sun" and "absence." It presents a stroboscopic (circular) image in the context of Ravel's *Bolero*. The concept of structured strobe imagery and the "emptying of all form" is reminiscent of Tony Conrad's *Flicker*; the use of a classical music counterpoint suggests irony and abandonment of cinematic interests. The recognition of media propaganda and its effects on both viewer and filmmaker can produce a kind of "toxic shock." Shortly after *Letter From Vancouver*, Tougas discontinued filmmaking until the late seventies.

Tougas' present interests in avant-garde work are tied to his previous concerns for filmic "portraiture." (In 1972, he completed a rarely-screened and never-distributed film entitled *Feminist Portrait*.) The expression of history and culture through the portrait is for Tougas a quintessential aesthetic challenge. It is at the level of cineportraiture that he seeks to capture the human presence in the world, and this presence has been the subject of all his films.

The work of Tom Braidwood represents related, overlapping, and complementary concerns. Braidwood's work, which also utilizes media and strict formal considerations (the loop, synchronous/asynchronous rhythms, and duration), differs from that of Tougas in that it is preoccupied with emotive impact and shock techniques. Braidwood's conception of duration (as indicated in his later work) is not meditative, but kinetic and rhythmic. The background that he brings to cinema is a blend of writing and dramatic skills, and a continuing interest in positioning film practice within social and political contexts.

Prior to his more violent and structured "replies to contemporary culture," Braidwood's work featured meditations on vanished cultures.

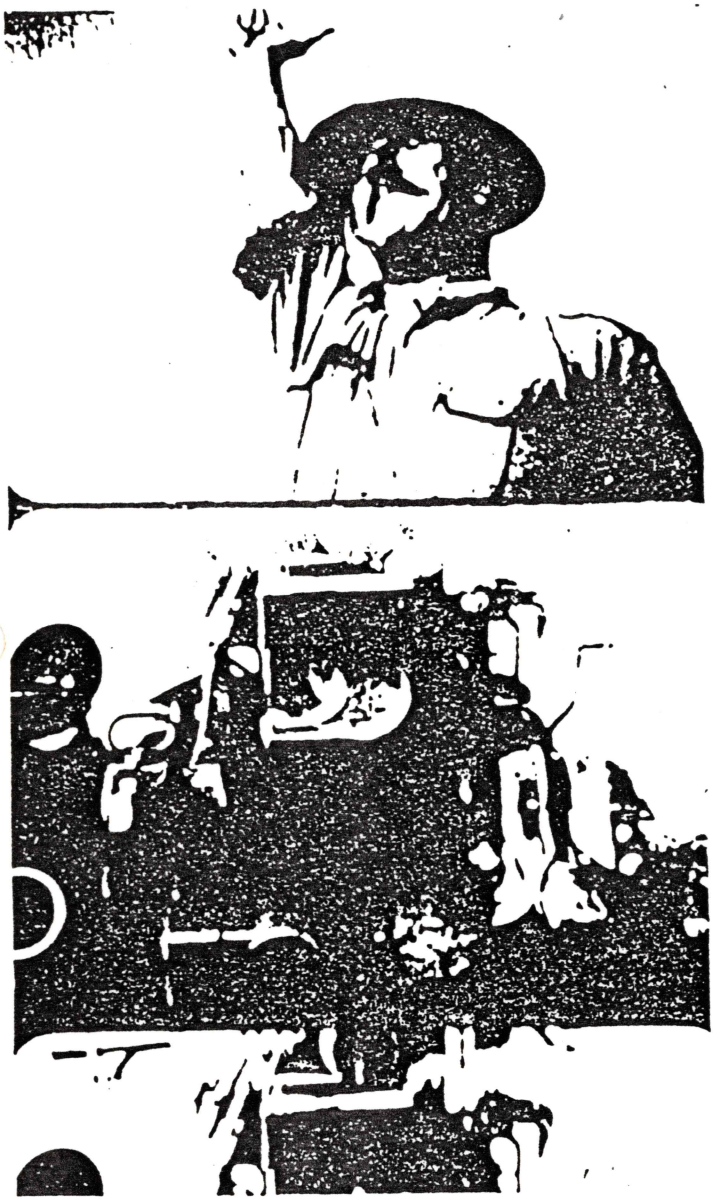


Kirk Tougas frame extracts *Letter from Vancouver* 1973

Willow (1972) sets nature against a kind of "negentropy" (to use Tou gas' expression): the sound track offers rain and thunder as an imaginary "ecology" set against visual abstractions that become more and more concrete and representational of landscape.

Wind from the West (1972) is a reply to Godard's *Wind from the East* (in Braidwood's words) "through the eyes of an already dead expression, romanticism." Through a series of static shots (stills), and competing soundtrack dominated by sounds of nature, the lost cultures of rural farming and Indian civilization are fleetingly "restored" for our eyes.

The relationship between art, politics, and culture is a theme that reappears in many of Braidwood's films. *Inside the Reflection* (1973) portrays this issue in a highly stylized theatrical manner that was based on Nijinsky's last performance, a catatonic protest against war, for European royalty. *Inside the Reflection* is less a film about madness than an ontological view of conscience and pathos, morality in an immoral world. Art as moral enterprise is at issue.

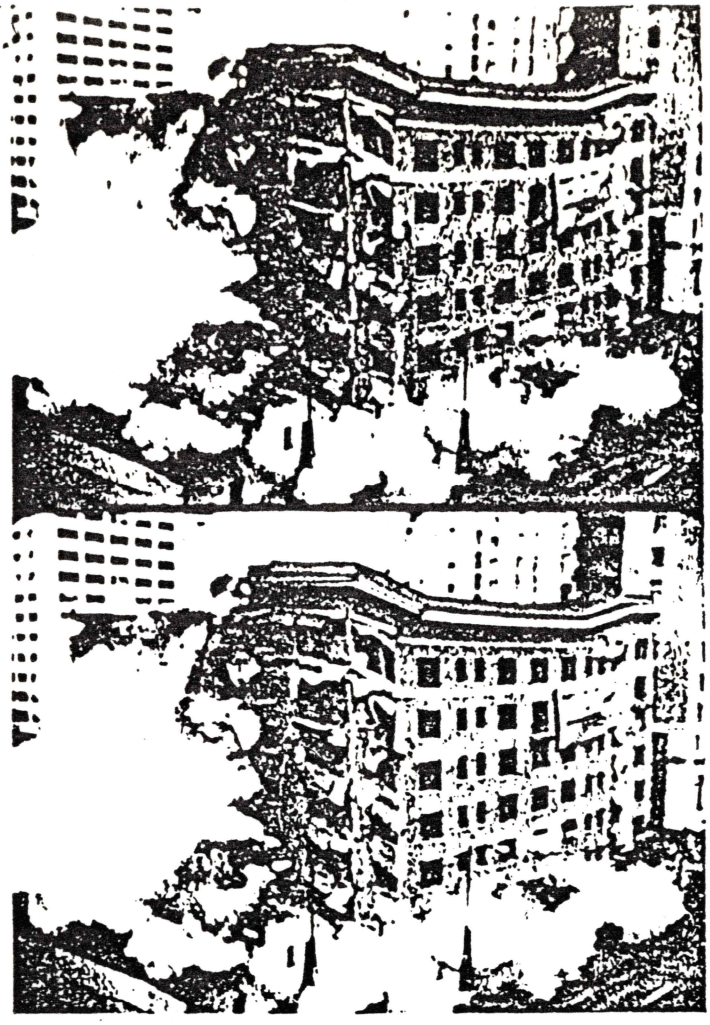


Tom Braidwood *Backbone* 1972

The use of film to provoke direct response in the viewer is most evident in Braidwood's two most remarkable films, *Backbone* (1972) and *Limited Engagement* (1976). *Backbone* is an essay on structures and metaphors of war, mechanization, dehumanization. It reveals not a paralysis of "guilt" but a reaction (against horror) that asserts itself through command of language. The premise that Braidwood employs is related to the leftist strategy "which asserts that what people believe, and thus the way they will behave, can be changed by the very form of the way in which they are represented," a formalism expressed in the Soviet publication of the twenties, *Novy Lef*. The brief, metaphoric prologue of *Backbone* is suddenly displaced by a loop of two images: a soldier raising his arm, and a shell casing ejected from a cannon. These two shots (20 frames each) repeat for almost the duration of the film. The sound track also has two components: a musical chord (and the word "fire"), and a hiss sound which initially synchronizes to the cannon-shell ejection. These two images, and their sound component, form a "backbone" that sustains a sense of violence. The sound loops slowly (and almost imperceptibly) begin to slip out of sync with the picture: near the end of the film the two loops assume complementary orientations. A final (epilogue) sequence interrupts the looped backbone of the film: we see a woman embracing a soldier and then, as her hand reaches out in the same manner as the soldier's command to fire, the frame is frozen and we meditate on the image in silence.

Limited Engagement (1976) sums up Braidwood's concerns for "media conditioning" and both artist's and public's responsibility for the discourse of images. This film situates the viewer as respondent in its presentation of coded (connotative) media language construction and deconstruction. *Limited Engagement* utilizes a "psycho-sexual" narrative that revolves around two shots which are (as in *Backbone*) looped and played off a manipulated sound track. Braidwood's primary concern is to generate a violent and provoking film text that contrasts "the giving of life" with "the taking of life."

Limited Engagement begins with a prologue section that employs entertainment conventions and parody. Suddenly, the film "erupts" with the two shot repeating loop sequence and the audio phrase: "What's a nice girl like you doing in a place like this?" From this point, the visual loop remains the same and the audio features "cut ups" of the original phrase that reconstitute themselves into numerous variations: "What's nice in a girl like you?" "What's a nice place like this doing in a girl like you?" etc. Each permutation-combination contains metonymic allusions to the submerged and implied sexist meanings behind the original phrase. The two-shot loop also is sexual in connotation: the first shot features a shell removed (moving left) from a cannon, the second shot features a baby handed over (moving right) from one person to another. The metaphoric connection between death/life is stunningly archetypal; the metonymic deconstructions of the audio track suggest a conscious reflex to the domain of "submerged" meanings. Braidwood's strategy is to allow this construction to linger for some minutes. (I feel it could go on for hours.) The film ends with a montage (epilogue) section that ironically plays off image against audio ("quick and easy" repeating). The humour that some of these epilogue con-



Chris Gallagher *Terminal City* 1982

structions generate is punctuated by another traumatic image: a woman's corpse carried down the road towards an Auschwitz burial and the sound track once again reminds us: "What's a nice girl like you doing in a place like this?"

The above two films, particularly *Limited Engagement*, raise questions concerning the "purpose of avant-garde film" and its capacity to politically confront mass-dominant media and (the ideologies of) hegemony. Braidwood's deliberate use of formal strategies acting in support of political critique and deconstruction are a notable extension of a tradition of photo-montage (Heartfield) that is as relevant today as it was in pre-Nazi Germany. The strategy of implicating the viewer is one that does not readily provide answers. There is no voice of authority/omniscience "explaining it all;" there is no invoking of closure on questions.

A.R.

POETIC FORMALISM AND THE STRUCTURES OF VOYEURISM

The mid-seventies also produced a range of films that were expressly non-political and situated the filmmaker in positions of consolidating previous avant-garde interests in lyrical film, synaesthetics, and structuralism. The dominant characteristic of this work was its ability to revive an interest in poetic vision and diaristic practice, and to extend the previous formal concerns into areas of structural refinement and voyeurism.

GORDON KIDD

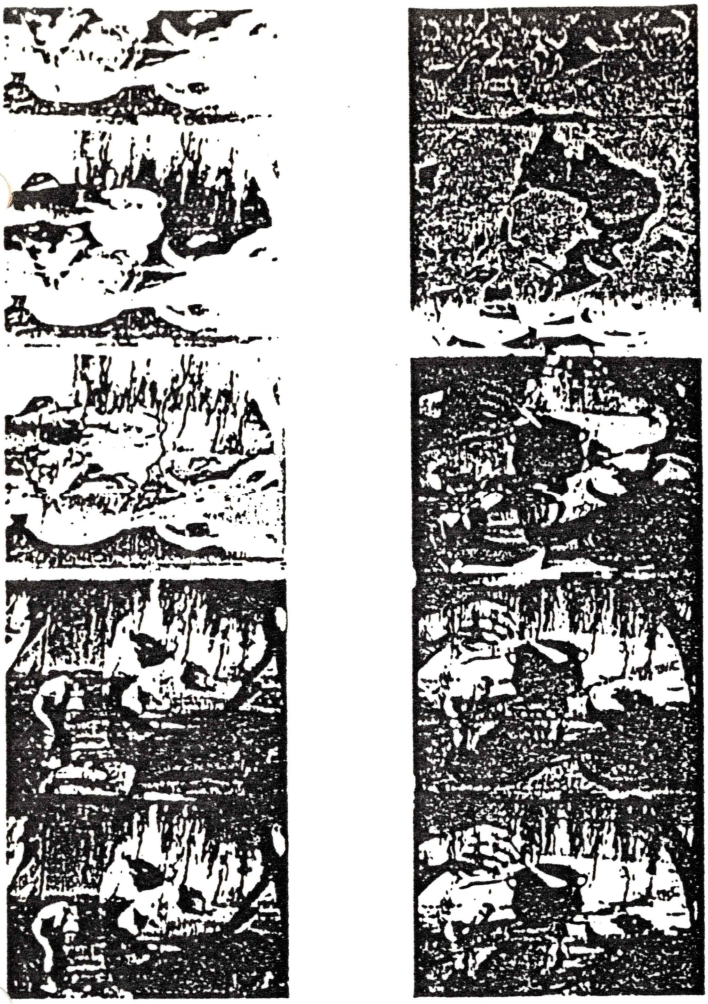
Gordon Kidd began making films in the mid-seventies. His work is typified by a lyrical-poetic impulse that is informed by the paradox of Buddhist and pantheist influences. His films are, as he stated, a poesis, "a sound and kinetic visual experience (which) most readily becomes a synthesis of life experience and thought processes/of memory/immediate awareness/of emotional colour."

Wave Prelude (1974) expresses a highly textual and kinetic sensuousness. The camera is used to "paint" water textures into kinetic patterns; the optical printer is used to create a frame-within-a-frame structure that presents tightly-controlled complements, contrasts, and visual counterpoints.

Gulf of Georgia (1975) is a companion piece to *Wave Prelude*. It extends the exploration of "oceanic" consciousness into mythic impressions of seaport, contrasted by commercial (collage-like) icons of boats.

In making *Olympus* (1976), his most successful film to date, Kidd returned to the dynamic camera eye of the personal vision to create a "homage" to the landscape of the Pacific Northwest. In contrast to his earlier preoccupations with detached facades, *Olympus* set in motion a "shamanistic eye" that was free and ritualized, mobile and contained, in a synergistic interpretation of (in his words) "the majestic landscape . . . (that) inspires tremendous power of elemental chaos and order."

Olympus attempts to reconcile a totemic worship of nature with a mythical status accorded to universe and cosmos by the Greeks. The film is permeated by movement, flowing cinematography, transient details that course in and out of the frame. Perception as transcendent ritual (the enactment of which produces "vision") is strongly suggested in the chants that accompany the visual tract. *Olympus* is atavistic and primeval: it creates the sense of the filmic frame as (in Kidd's



Peter Lipskis *Processed Gello* 1977

words) "an opening through which we can go into the experience" of visionary cognition.

Self Portrait (1978) and *Lux Process* (1980) reaffirmed Kidd's interests in the poetic image as contained and realized in (the artist's) persona, in narcissism, and in visual environments that emanate from the concept of "self."

Kidd's work, prior to his departure for Toronto in 1982, also included a poetic essay on Ann Waldman (*Sketches 1977*), and a mytho-dramatic narrative of the encounter between the old/eternal myths (personified by Al Neil) and the young man in search of truth (himself) in *Tenderizer* (1981).

PETER LIPSKIS

Peter Lipskis' film work also emanates from the mid-seventies and represents a search for the structured use of metaphor, symbol, and cinematic analogues of consciousness. Lipskis works in a variety of film and video formats (8mm, 16mm, video-film hybrids). His films display a fusion of synaesthetic and structural styles (influences from Rimmer, Razutis) with conceptual modellings that are highly original. The pluralism of his interests is unified by a penchant for a kind of universal consciousness and an archetypal language.

Good Friday (1974) evokes a Catholicism that is medieval, ritualized, and somber. The grainy step-printed procession of people exiting from a church (on Good Friday) is framed within Gregorian chants that suggest an ironic counterpoint to "grace" and conversion. This steady procession is evocative of Standish Lawder's *Necrology*, wherein humanity passes through the "gate" of the camera on its way to some deadly destiny.

Spare Parts (1975) remains as Lipskis' most ambitious and successful attempt to structure symbolism, language, and the (unconcious) nature of anxiety. It presents a four-part examination of narrative (the concept of story and meaning) as a psychic construction rich in disguised meanings. *Spare Parts* portrays "echoes of thought" and a tensing of cognitive awareness that many viewers find frustrating. The lexicon that Lipskis employs is comprised of selected stock-footage shots. The length of each shot is firmly fixed at 24 frames (1 second), a length that allows him to capitalize on the 26-frame displacement between optical and audio projection playback. The one-second image that the viewer sees includes a second of sound from the *previous* shot. The organization of shots is predicted on various models of mathematical permutation/combination. David Rimmer had earlier experimented with segmenting a strip of film into freeze-frames of varying duration and thereby constructed a narrative based on temporal discontinuity and structuring. Lipskis' work is far more sophisticated and complex.

Parts I through IV of *Spare Parts* conduct various explorations of narrative construction, structured exercises in combining shots in mathematical permutation-combination. Lipskis is attempting to equate cinema with conscious-unconscious processes. His use of metaphors ("divers entering and exiting (from) water") is less important than the innovative model that he creates. Lipskis' structuralism is uniquely distinct from the camera-apparatus views of Snow or the perceptual apparatus of Rimmer; his cinematic rendition of narrative implies that the construction of meaning can only take place in the viewer's mind, and that much of it depends on memory and the ability to relate to several narrative structures at once.[14]

In 1976, Lipskis completed *Eye Dentified Image*, which segments and repeats simple actions (smoking a cigarette) in varying degrees of abstraction, rhythm, and counterpoint.

Processed Gello (1977) further develops Lipskis' interest in structures of perception and implicates his work in the Orphic tradition of analyzing chromatic patternings. He employs colour cycles (based on primary and secondary values) and optical procedures (of combining images), founding his entire structure on a "colour-note score" created for the film.

Lipskis continued his many interests in structure and representation in his 30-minute *Trance American Impressions* (1977) which he shot on a bus trip to New York. The film's step printing of window views (in 5, 10, and 20-frame rhythms) is roughly analogous to heart-beat rhythms.

In 1977, he also completed *Floating Reflections*, a visual poem that attempts to unify nature and perception using expressionist surface textures. The film relies on the water-earth-air-fire quarternary to create a dream-like web of image correspondences which act as analogy to (in Lipskis' words) the "images representing a floating world" found in Japanese wood-block prints. *Floating Reflections* is less than totally

successful: while a few sequences create a visual synthesis that is arresting, the inclusion of personal footage, of friends and other diaristic material, detracts from the film's mythopoetic conception. The same year, Lipskis completed a remarkable, largely unknown, film entitled *Haunted House*. It is a silent meditation on the personal details of family (his parents recorded in textures, shadows, patterns, extreme closeups). Tender and loving, the film illuminates the "past" by the "presence of absences." Its poetic mood evokes the "restoration" that is properly the quality of love and remembrance. Withholding it from public exhibition indicates Lipskis' feelings for the images (and their privacy) as well as his mistrust of the "art world."

More recently Lipskis has completed *Eclipse* (a 1979 time-lapse document of the total solar eclipse in Portland, Oregon), *It's a Mixed Up World* (a 1982 compilation film on a kind of madness that the world's images evoke), and *Crystals* (a 1983 short essay on the symmetry found in snowflake crystals). Lipskis' other work in video-film (films translated to video) or super-8mm is more directly preoccupied with "New Wave" culture, rock and roll, and comic melodramas (e.g. *I was a Teenage Personality Crisis*). He has worked in collaboration with performance artists and has continually involved himself with documenting art-culture practices. Less formally evolved than his 16mm work, the video-film and super-8mm work reflects a topicality appropriate to the culture from which it emanates.

CHRIS GALLAGHER

Chris Gallagher's work in film derives from his interests in photography and fine arts. The films are typified by irony, humour, and structuralist interests directed towards the issues of cinema and spectatorship. They reveal a kind of bi-polar "hot" and "cool" (to use McLuhan's terms) predisposition to the medium. Yet the emotional underpinnings, a fulcrum that specifies positioning and balance, rarely surface. If we are to be informed by his early work, it seems that spectatorship in Gallagher's films implies voyeurism.

His first film, *Sideshow* (1972), situates the audience as voyeurs in the exploitation of innocence. A performer arrives on stage, opens a suitcase, and pulls out a baby which then becomes the subject of moronic fascination. Gallagher's interests in social parody are further revealed in *Santa* (1979), where the posing of kids and adults with a Pacific Centre Mall "Santa Claus" is documented in a series of "snapshots." In both films, what is difficult to discern is the precise nature of the voyeurism intended. The camera presents a passive recording of "captive" events.

In 1975, Gallagher completed *Plastic Surgery*, a film of both synaesthetic and biographical proportions which presents a (largely-unstructured) series of visual sequences. These vary in subject matter, technique, and synaesthetic influence-models and revolve around the film's central metaphor: the cutting and suturing of the filmmaker's body. The techniques and subject matter that he employs directly acknowledge synaesthetic avant-garde filmmakers and their practice (O'Neil, Razutis, Rimmer).

In 1975, Gallagher also completed *Atmosphere*. This film represented a radical shift to more minimal and structural avant-garde practice. *Atmosphere* is derivative of Chris Welsby's *Wind Vane* (1972), and Michael Snow's <——> (1969). However, Gallagher's work is more in keeping with a strategem aimed at perplexing the viewer and countering expectation.

The apparatus he employs is a camera-wind-vane mounted on a tripod. The focal length of the lens is fixed and the pans and swish-pans are activated by the wind. (The preeminent status accorded the camera is revealed in the closing shot of the film.) The camera frame acts as a window, scanning the landscape in constantly shifting sporadic bursts within which only the horizon remains constant and a passing seagull becomes a noted intrusion.

The Nine O'Clock Gun (1980) places even more minimal guidelines on cinematography and editing procedures. The viewer (as passive voyeur) observes a stationary "window" looking out from Vancouver's Stanley Park. The film is constructed as a (Lumiere) one-shot; the camera is set on a stationary tripod and we passively observe the action until the gun goes off. Here, cinema and voyeurism reach an almost absurd level of reduction.

Gallagher's most successful film dealing with the structuralist problematic is *Seeing in the Rain* (1981). A ride on the downtown-bound Granville Street bus is fragmented-segmented to the rhythms of the windshield wiper. The normal chronology of forward movement is altered, so that each beat of the wiper (accompanied by a metronome beat) triggers a cut in the temporal continuity. The jumping back and forth in time is unified by a view of the same road and the inevitable movement down it. Gallagher's clever use of montage exposes the very nature of film continuity. Here, also, the influence of Chris Welsby may be noted.

Terminal City (1982) presents the notion of hyperbole informing structure. The Devonshire Hotel is imploded ("controlled demolition") and filmed from a set camera angle at varying speeds (as high as 200 frames per second). Viewers of the event are documented on the sound track, also at varying speeds of playback. Although this film shares a common interest in extreme slow-down techniques with the early sixties' Fluxfilms (the 5 min. blink, the 15 min. smile, etc.), Gallagher's use of these techniques is directed at the voyeurism inherent in social events seen as "art" (including his own film).

In 1983, Gallagher returned to synaesthetic expression and looped structurings of image/sound with the completion of *Mirage*. The film features a repeating image of a Hawaiian woman disrobing and dancing for the camera. This image is synchronized with a sound-track loop (from Elvis' *Blue Hawaii*) that suggests (as ironic counterpoint) the "mourning" of culture. The image-sound is every scopophilic voyeur's dream ("She'll dance for me"). Negatively superimposed on the central image are "snapshots" of Hawaii, palms, volcanic-fire fountains, surf, historical footage of Pearl Harbor, performances for tourists.

The diegesis is all fantasy and metalanguage — the language of tourist myths. The film restates some of the avant-garde interests in loop imagery and expressionist overlays, and offers ironic comment on fantasy and voyeurism.

However, *Mirage* was completed at a time when the issues of voyeurism and pornography had reached the status of public outcry. The parody that is offered in place of critique aligns with reinforcement of voyeurism. It tends to invoke the "pleasure principles" and coded conventions of dominant cinema by foregrounding the rhetorical invention (the nude woman) with the same degree of mystique and "unattainability" that classical cinema has accorded women for years. The problems inherent in a work attempting to be both "art" and "critique" resolve themselves at the level of *positioning*. As Nichols posited: "The informing ideology may indeed be put on display, but this may only involve a sophisticated game of displacing it from one level

only to reinsert it at another."[5] This is precisely the "mirage" of Gallagher's use of irony and voyeurism.

A.R.

AN ADDED PERSPECTIVE

If Gallagher generally fails to address his own social positioning, he nevertheless often succeeds in displacing the cultural "facts" of his films onto a mythic-philosophical plane, where they can be looked at with a different kind of detachment. Thus *The Nine O'Clock Gun*, placing clock-time in the quotation marks of the 400' take, provokes a contrast between life as anticipation/duration and death as instantaneity; his literal approach to representation reinvests a symbol of power with its original meaning, and invokes a social order in which the tools of imminent apocalypse are ubiquitous yet invisible. *Terminal City's* blank stare transforms urban demolition into a pseudo-Noh ritual, complete with wailing chant from the participant onlookers and the final ascent of the building's ghost to heaven. *Seeing in the Rain* seems to play with Zeno's arrow paradox (an aesthetic subject particularly relevant to a medium that rests on the illusion of motion created by the motionless sampling of movement) by fragmenting and restructuring the line of forward motion almost cubistically; again, the result reveals a mythic dimension, the science-fiction of space-time, which challenges our habitual orientation procedures. Gallagher's deadpan imagination, at its best, transcends his models to create structures refreshing in their metaphoric implications and richer for their serio-comic ambivalence.

T.R.

SOME OTHER "PERSONAL" FILMMAKERS

Several filmmakers have contributed isolated yet notable personal statements to seventies' filmmaking, including Bill Roxborough (*Imaged Dream*, 1973), Rick Patton (*Night of Samhain*, 1974), Ellie Epp, and Richard Martin.

Ellie Epp's only completed film, *Trapline* (1975), is an experiment in relating image and sound through the parameter of perspective. The visuals consist of flattened, painterly semi-abstractions, isolating slow transformations of light and structure, and were shot in various parts of London's Kensington Baths. These long discrete visual moments, generally in medium shot, are related to each other as representations of an actual space only through the soundtrack, an apparently continuous recording emphasizing reverberance, depth and volume. As an investigation of cinematic space, the film owes a debt to Michael Snow. Yet it is remarkable for its contemplative quality: its heightened perception of the actual evokes a pure, ideal vision.

Richard Martin has made two short films of interest. *Your Daughter is Sleeping* (1978) is an essay in combining autobiography and invented narrative. His next film, *Diminished* (1979), reveals that Martin has found a more satisfying way of dealing with the interface that interests him, that of personal feelings and making images. The film is dedicated to his step-father. Its form is simple: an antique photograph of a little boy, progressively obscured by white streaks and blotches, frames a central sequence of continually dissolving stills depicting moments from a hospital visit. A transitional snapshot of a middle-aged couple links, by implication, the little boy and the hospital room. There is no further clarification, although the two brief subtitles ("no not alone," "I love you") posit the filmmaker as eye and his relation to the empty hospital bed: a relation involving time, loss, and a looking again at the

Chris Gallagher *Mirage* 1983

images that remain. Tougas' *Far from Quebec* comes to mind — the more so as the boy seems to be a mid-19th century image and thus is probably not the man in the snapshot. It's as if Martin is attempting to come to terms with his grief by universalizing it. He succeeds in telling his own life through everyman's. The film is very poignant: its delicacy and reserve speak emotion. One hopes that Martin, and Epp, both of whom have demonstrated a talent for imagistic autobiography, will continue to work with symbolic and first-person forms.

T.R.

AVANT-GARDE DIRECTIONS IN THE EIGHTIES

Avant-garde film is hardly a closed issue. Throughout its traumatic history of accomplishments and failures it has featured sudden bursts of activity, manifestos, and displacements of its predecessor forms. A critical perspective usually arises *after* the practice.

The militancy of avant-garde film is predicted on opposition to present societal norms, cultural institutions, language. Truly, there are many avant-gardes that could lay claim to these qualities. Some we could characterize as "bourgeois" by the very nature of their interest in a return to supreme forms of individuality. Likewise, we may note the existence of an idealist (teleological) practice that affirms final "cause" through symbology, whether emanating from the Occident or Orient. There are many others: an avant garde dominated by fetishism and the unconscious, a fine-arts film avant-garde which attempts to identify with modernist/post-modernist impulses, and so on. But it is the avant-garde that precipitates societal change and challenges the fundamental ideologies of any given culture that I wish to acknowledge.

This "socialist avant-garde" (for lack of a better term) is becoming an important practice within film and video. One need only examine the current surge of periodicals dedicated to these interests to identify their strength. The fine-art galleries will be a venue for this work only when it "expires." For at the root of socialist-art practice are the *pragmatics* of its practice: it seeks to displace the cultural vestige of bourgeois ideology and the infrastructure that supports it. By comparison, we can see that the more conservative (bourgeois and capitalist) strategies within the "avant-garde" serve to "mirror" their cultural contexts in a form that promotes mystification (of ideology, technology, personality) and includes the cultivation of individual fame and monetary gain (through sales and speculation).

There are several questions that must be posed for both socialist and

conservative interests. No one can deny that the film medium has profoundly changed as an "art" form, as technology, as language. The "multiple-meaning ideograms" of Eisenstein are not those of the present generation, and do not fascinate us in the same manner; contemporary video and digital image processing are rendering much of cinema obsolete. (It is too expensive, its venues are too scarce, its machinery is antiquated.) We have seen resistance to video within the film-avant-garde, but this early "purism" is by now also an anachronism. We see technology emanating from a conception of "what is important" to man/womankind. And this conception directly implicates, rather than excludes, the notion of "consciousness." Collective art and consciousness do not emanate from anonymous masses abstractly configured under a unifying slogan. Collectivity is deeply rooted in the individual psyche. Technology and futurism cannot impose collectivity, only collective consumerism.

The "kingdom of the unconscious" (notably of the sixties) developed its own apparatus/technology and accompanying synaesthetic "language form." (Some of this technology sits in our living-rooms as video recorders, or emanates via advertising.) Its purpose was seemingly to revive the lost pleasure principles of society and to elevate individual-subjective vision to the status of collective universality. It denounced both bourgeois and historical art practice, and substituted visionary impulse and poesis. It also lost the war with reality, as the consumerism of the seventies indicated. Its loss was predicated on the fact that it could never "become conscious." Becoming conscious, posited Freud, "is connected with the application of a particular pysical function, that of *attention*."[16] We could ask, "attention to what?" Louis Althusser, writing on Brecht, proposed an eloquent answer:

> "Strictly speaking, there is no dialectic of consciousness: no dialectic of consciousness which could reach reality itself by virtue of its own contradictions . . . for consciousness does not accede to the real through its own internal development, but by radical discovery of what is *other than itself*."[17]

An avant-garde film practice that is wholly self referential and closed can never accede to, and affect, "the real." This is one of the illusions of bourgeois art practice — it creates aesthetic institutions that reify speculative abstractions (e.g. "art for art's sake") and seeks innovation in psychopathology (the "tormented genius"). Psychoanalysts have long maintained that great feats of expression are possible within an unconscious state of mind. The complexity of dreamworks and schizophrenic vision attests to this. The artist, through technological fetishism and narcissism, can project his "images" into the machine, and through the cinematic machine into the culture. This is the art that continually loses its battle with "the real," yet produces work of exquisite imagistic proportions — work that resides in bourgeois "art banks."

There are many forms that avant-garde film in the eighties will take, and one of those forms will be based on direct political contact with a society that most will agree is in crisis. This avant-garde film form need not imitate "populist" models or dominant (feature) film conventions, nor be legislated into existence by the Canada Council. It arises from the conditions of social relevance and the reformation of existing cultural practice. Its catalogue is not in the art gallery, it is written on the walls of decay and "urban renewal."

The fateful question that Freud posed in his concluding remarks in *Civilization and Its Discontents* was directed at the issues of mastering "the human instinct of aggression and self destruction." We may also agree that this question, above all others, requires special interest and attention.

A.R.

NOTES

1 Rimmer's processing equipment usually featured a camera and projector system which allowed him to rephotograph existing film frames. Although his technology was crude, his technique was sufficent to render quality printings of the original footage.

2 Videosynthesis is typified by electronic (analog) manipulation of existing video signals and not the implementation of off-the-shelf store-bought hardware. While the commercial networks have "special effects" generators (and a rapidly increasing collection of synthesizer hardware), artist videotapes have historically been limited to primitive standards of combination and transformaton. The mid-70's curatorial biases were largely directed against synthetic video and other non-anthropomorphic video processes.

3 The actual videosynthesizer was constructed by Jim Armstrong and Al Razutis, with Armstrong credited as circuit designer and manufacturer (of processing modules) and Razutis being responsible for the overall concept and design. The synthesizer featured a quantizer, mixer, and colourizer, as well as interface units to bio-feedback monitors.

4 This holographic film prototype was the first of its kind in Canada. It was a complete 360-degree animate strip, and as such should not be confused with the cylinder "Integrams" (the colour pseudo-holograms) produced by Multiplex in the U.S.

5 The process of constructing filmic texts is one that emphasizes the "signs" of production and the qualities of the signifying material (emulsion, editing conventions, cinematography, opticals). Codes that are specific to cinematic texts must be recognized if the process of "reading" the text is to take place.

6 A. Razutis, *America Film Study Guide*, privately duplicated, 1982.

7 Pacific Cinémathèque *Program Guide* (Mar. 1981).

8 "Origin of Film: The Visual Essays of Al Razutis. Part 1: The Bachelor Machine Courts Disaster," *Independent Eye* (Toronto: Canadian Filmmakers Distribution Centre, Winter 1982).

9 A. Razutis, unpublished notes.

10 From the film's prospectus and a later unpublished description by Black.

11 In Japan, silent films were explained and interpreted to the audience by the *benshi*, a lecturer-narrator who sat on a platform beside the screen. Some benshi's were more famous than movie stars.

12 "Byron Black, Celestial Joker," *Cantrill's Filmnotes* #20 (Melbourne: Dec. 1974), p. 13f.

13 Black worked his movie metaphors into an elaborate film-performance dealing with "the history of the motion-fixture industry" as image and illusion called *Lites on the Wall* (1977). Another performance piece, *Errol's Errors*, focused on the life/films of Errol Flynn as exemplary illusion. Black's performance venues included the Vancouver Art Gallery, Pacific Cinémathèque, and especially the Western Front, where he had become friendly with Michael Morris.

14 Cage (as quoted by Brakhage in *Metaphors on Vision*) posited: "The relationship of things happening at the same time is spontaneous and irrepressible. It is you yourself in the form you have that instant taken. To stop and figure it out takes time."

15 Bill Nichols, *Ideology and the Image* (Bloomington, Ind.: Indiana University Press, 1981), p. 64.

16 Sigmund Freud, *The Interpretation of Dreams* (New York: Avon Books, 1965), p. 632.

17 Louis Althusser, *For Marx*, trans. Ben Brewster (London: Verso Editions, 1979), p. 143.

RESUME

Al Razutis

Born: April 28, 1946
Bamberg, Germany

Citizenship: CANADA

Languages: English, Lithuanian

Professional Status: Artist (Film, Video, Holography, Sound)
Writer (Film and Holography Criticism, Fiction Prose)
Media Systems Designer (Film, Video, Holography)
Educator (Film, Video, Holography, Theatre Craft/Design)

EDUCATION:

University of California (Davis) 1967-1968
Graduate Studies (PhD Program), Nuclear Chemistry
Fellowship (1967-1968)
Resigned, 1968

California Western University 1963-1968
B.A. (Cum Laude) 1967
Major: Chemistry, Physics
Minor: Mathematics, Biology

TEACHING POSITIONS:

1980 - Associate Professor (Film), Simon Fraser University, Canada
1980, Instructor, Holography Workshop, Simon Fraser University
1978-1980, Visiting Associate Professor (Film), Simon Fraser University
1978, Visiting Faculty (Theater Craft & Design), Banff School of Fine Arts
1976, Visiting Faculty (Theatre Craft & Design), Banff School of Fine Arts
1974-1976, Instructor (Film, Video, Animation), Vancouver School of Art
1972, Artist in Residence, Member of Faculty (Film, Video), Evergreen State College, Washington, USA

-- and assorted workshops in film and holography

..../2

MEDIA SYSTEMS DESIGNED AND IMPLEMENTED:

1980 - work-in-progress on 3-D (Polaroid) Stereo Motion-Picture System
A double-system 16mm recording and playback/projection system for full colour 3-D motion-pictures.

1974-1977, Videosynthesizer/16-channel colourizer and mobile mixer (in association with Jim Armstrong)
A video processing device which enabled the user to colourize, multiple key, feedback, and mix up to 6 incomming video sources (B&W or colour)

1976 Video Bio-feedback system for live performance
A system for interfacing a performer/artist via bio-monitoring devices (for EEG, ECG, GSR, and ultrasonic monitoring) to a videosynthesizer thereby producing a live bio-feedback function whereby the video images are directly controlled and synthesized by bio-rhythms; demonstrated live on broadcast (Ch. 10) during "SYNAPSE"

1976 Helium-Neon (Special Purposes) Laser
15 mW laser constructed for long coherence applications in holography

1976 Volume-Screen Projection System (constructed in association with Banff Theatre Craft students)
16mm film projection of computer graphics onto variable density grid for applications in scenography and theatre design

1974 Motion-Picture Holographic Cylinder
A looped animation sequence containing a virtual image (holographic) inside a cylinder - full transmission holography; purchased by XEROX for exhibition at the Ontario Science Center

1974 Holographic projection system
Parabolic mirror projection screen for projecting holographic images - Research funded by the National Film Board

1973 Holographic Laboratory and Optical Tables
A facility for the production of laser transmission and white-light reflection holograms containing isolation tables, optical systems and darkroom-processing systems

1970 Optical Motion-Picture Step Printer
A 16mm Optical Printer for special effects printing, reproduction, and experimentation - constructed and improved over a period of 2 years

1970 Film Animation Stand

OCCUPATIONAL POSITIONS (Media Related):

1981, Canada Council Advisory Arts Panel (One Year Appointment)
1974-1976, President, Creative Visual Alchemy Inc.
1975, Juror, Video Jury, Canada Council
1973-1974, Designer and Project Co-Ordinator for the following N.F.B. Research Projects: Holographic motion-picture system
Image Synthesis using Video
Holographic 3-D imaging
1973, Juror, Canadian Film Development Corporation Regional Competition
1969, Founder/Manager, Intermedia Film Cooperative
1967-1969, Director, Underground Cinematheque (Calif., and Vancouver)
1969, Quality Control Chemist, Trans Canada Film Lab, Vancouver
1968, Video Technician, U.C. Davis

-- as well as numerous free-lancing positions in film productions (e.g. cinematographer, location sound, assistant cameraman, assistant editor, editor, optical specialist, animator) of both documentary and dramatic formats.

PROFESSIONAL SOCIETIES:

Founding member, Society for the Advancement of Critical Cinema (1983)
- co-editor of critical journal "OPSIS"

Founding member, Association of Canadian Film Artists (1982)

Founding member, member of the Board of Directors, Cineworks (1979-1981)

Member, Film Studies Association of Canada (1982)

Member of the Board of Directors, Canadian Film-Makers Distribution Center (Vancouver) (1981)

Member, Intermedia (1968-70)

GRANTS AND AWARDS:

1984, Film Production Grant, Canada Council
1983, Project Cost Grant and Travel Grant, Canada Council
1982, Project Cost Grant, Canada Council
1980, Film Production Grant, Canada Council
1975, Senior Arts Grant, Canada Council
1973, Senior Arts Grant, Canada Council
1972, Short Term Arts Grant, Canada Council
1971, Production Grant, Canadian Film Development Corporation
1970, Post-Production Grant, National Film Board
1970, Short Term Arts Grant, Canada Council
1969, Short Term Arts Grant, Canada Council

- plus several group initiated grants from the Canada Council

FILM AWARDS:

1982, 20th Ann Arbor Film Festival, Prize Winner (LUMIERE'S TRAIN...)
Kent State University Film Festival, Prize Winner (LUMIERE'S TRAIN..
Baltimore International Film Festival, Honorable Mention (LUMIERE)
20th Ann Arbor Film Festival, Prize Winner, (WILDWEST SHOW)
Virginia Commonwealth University Festival, Prize Winner (WILDWEST)

1979, Ann Arbor Film Festival, Prize Winner (SEQUELS IN TRANSFIGURED TIME)
Kent Film Festival Prize Winner (SEQUELS)
Northwest Film & Video Festival, Honorable Mention (SEQUELS)
Northwest Film & Video Festival, Honorable Mention (EGYPTE)
Sacramento Film Festival, Winner (Experimental), (EGYPTE)

1978, Grenoble Film Festival, Award of Merit (BRIDGE AT ELECTRICAL STO

EXHIBITIONS AND SPECIAL SCREENINGS:

Film and Video (One-Man Programs)

1984: The Funnel, Toronto, AMERIKA
Forest City Gallery, London, AMERIKA
National Film Theater, Ottawa, AMERIKA
National Film Theater, Kingston, AMERIKA
Queens University, Selected Films

1983, Kitchner-Waterloo Art Gallery, VISUAL ESSAYS
Vancouver Art Gallery, AMERIKA (Premiere) and Selected Films (Installation) - "Vancouver: Art and Artists"
October Show (films)
Boston Film and Video Foundation, AMERIKA
Brown University, Semiotics Division, Selected Films
Cinema Parallele, Montreal, AMERIKA
Obscure, Quebec City, AMERIKA

1982, Boston Film and Video Foundation, Selected Films
Trent University, Seminar, Selected Films
Brock University, Seminar, Selected Films

1981, Cinema Parallele, Selected Films
Canadian Images Film Festival, Selected Films
Film Studies Association of Canada, Annual Meeting, Selected Films
Zone Cinema, Hamilton, AMERIKA
Open Space, Victoria, AMERIKA
Northwest Film Study Center, Portland, Selected Films
Cinema Parallele, Montreal, Selected Films
Trent University, Peterborough, Selected Films
Pacific Cinematheque, Vancouver, Two Part Retrospective of Films

EXHIBITIONS AND SPECIAL SCREENINGS CONT.

Film and Video (cont.)

1980, Grierson Film Seminar, Niagara On the Lake, Selected Films
Edinburgh International Film Festival, Retrospective - Selected Films

1979, Tokyo-Nagoya-Fukui, Video: "VIDEOGRAPHICS: SELECTED WORKS"
National Gallery of Canada, "Canadian Film-Makers" - Selected Films

1978, Sao Paulo Bienniale, Video: "WAVEFORM"

1977, National Gallery of Canada, "Another Dimension", WAVEFORM
Pacific Cinematheque, Retrospective - Selected Films
Burnaby Art Gallery, Retrospective of Selected Video
Art Gallery of Ontario, "Independent Views", Selected Films
Museum of Modern Art, Paris, 'Canadian Video Art", Selected Video

1974 Vancouver Art Gallery, "Personal Film", Selected Films
Art Gallery of Ontario, "Videoscape", Selected Video (WAVEFORM)
Cinema Parallele, Montreal, Retrospective, Films to 1974
Vancouver Art Gallery, "Visual Alchemy", Partial Retrospective Films

1973 Museum of Modern Art, Paris, "Trajectories 1973", Selected Film & V

.....and other exhibitions extending to 1968

EXHIBITIONS (cont.)

Holography

1984, "Totem" (One-Man Show), Interference Gallery, Toronto

1983-1984, "Light Dimensions" (Group Show), Royal Photographic Society, U.K. - International Group Retrospective on the history of holography, on exhibit at the R.P.S. in Bath, U.K, and at the Science Museum, London, U.K.

1981, "Light Years" (Group Show), Museum of Holography, New York

1980, "Light Years Ahead", (Group Show), Photographer's Gallery, London, U.K.

1979, "New Spaces", Franklin Institute, Philadelphia, U.S.A.

1977-1978, "Visual Alchemy" (One-Man Show)', a touring exhibition, organized by the Burnaby Art Gallery and funded by National Museums, Canada Council, and External Affairs - on exhibit in Burnaby B.C., Ottawa, Saskatoon, London, and Seattle, U.S.A.

COLLECTIONS:

Film & Video

National Gallery of Canada
Vancouver Art Gallery
Burnaby Art Gallery
Art Gallery of Ontario
Pacific Cinematheque
Simon Fraser University
MacDonnel Film Library
Queens University
University of Montreal
Westcherster Library
Vehicule (Montreal)
The Hara Museum of Contemporary Art, Tokyo
Vancouver School Board
Creative Film Society, Calif.

Holography

Burnaby Art Gallery
Museum of Holography, New York
and private collections...

WRITINGS AND PUBLICATIONS:

"Regina vs....", OPSIS, Vol. 1, No. 1, 1984

"Contemporary Film Theory, New Narrative and the Avant-Garde," OPSIS, Vol. 1, No. 1, 1984

"Recovering Lost History: Vancouver Avant-Garde Cinema 1960-1969", VANCOUVER ART AND ARTISTS, Vancouver Art Gallery, 1983

"Critical Perspectives on Avant-Garde Cinema, 1970-1983" (co-authored with Tony Reif), VANCOUVER ART AND ARTISTS, Vancouver Art Gallery, 1983

"Expression and Transformation in Avant-Garde Cinema", paper presented to the Film Studies Association of Canada, Martin Walsh Memorial Lecture, Summer 1982

"Notes on the Art of Holography", NEW SPACES, Franklin Press, 1980

"David Rimmer: A Critical Analysis", monograph, Vancouver Art Gallery, 1980

"Manifesto: Cinema Art", reprinted in PARALLELOGRAMME, 1980

"Notes Towards the Analysis of a Message From Our Sponsor", unpublished, 1980

"Ilium: Express", novel, unpublished, 1978-1979

WRITINGS ON FILMS BY OTHERS:

"Critical Perspectives on Avant-Garde Cinema" , VANCOUVER ART AND ARTISTS, Vancouver Art Gallery, 1983, Tony Reif

"Origins of Film: The Visual Essays of Al Razutis, " INDEPENDENT EYE, Spring, 1982, by Peter Chapman

"Mary Brown vs. The Peterborough Four, or The Cinema Scopes Trial", PARALLELOGRAMME, August, 1982, Victor Coleman

"Visionary Experiments", PARACHUTE, Spring 1978, G. Koller

"Video Art In Canada", STUDIO INTERNATIONAL, May 1976, P. Gale

"Pacific Cinematheque", CANTRILLS FILM NOTES, Vol. 20, 1974, T. Reif

"West Coast Film-Makers", SELF PORTRAIT, T. Reif

SYNOPSIS REEL ONE: The general theme of Reel One may be summarized as the "mythic place" - a complex of historical referrents, sensations, locales, metaphors that typify "Amerika". The discontinuous and discordant structure of the image passages in Reel One begins the task of mapping out that mosaic of audio-visual interrelationships and linguistic levels. We also note the passage from synaesthetic visual concerns to more structural filmic concerns. The reel begins with a "prologue" (THE CITIES OF EDEN) concerning Eden and creation-destruction. "Manifest Destiny", as it were, is seen as a fiction that resulted in 'ruin'. This initial allegory is joined by a series of mapping gestures that implicates "Amerika" as television-information myth (SOFTWARE), space travel and high-tech sensorium (VORTEX), a destroyed landscape (MOTEL ROW PART ONE), a culture in a state of convulsion (ATOMIC GARDENING, BRIDGE AT ELECTRICAL STORM), or a culture of "beta sex" and impotence (MOTEL ROW PART TWO). The inconclusiveness of the various journeys (across the Bay Bridge, through Las Vegas, across graffiti-riddled landscapes and into mausoleums) may suggest to the viewer the probability of future journeys (and attempted completions).

SYNOPSIS REEL TWO: The general theme of Reel Two is the "metalanguage of our ti -- discourse, authority, and misrepresentation". In this section, audio-visual language systems (the "media" as it were) are foregrounded and delivered to a variety of deconstructive processes, visual hyperbole, and a shifting (at the level of voice and enunciation). The reel begins with an imaginary discourse (concerning male/female points of view) and a high-speed journey through the high ways and mountains/deserts of the western U.S. (THE WASTELAND AND OTHER STORIES). The conclusion of this journey into fantasy and post-card representation is threefold: we arrive back in Las Vegas (the television "strip" of MOTEL ROW PART TWO) for a fleeting glimpse backwards into the narrative, we come across an amusement park phenomenon (that for the first time implicates "viewing subject" and spectacle), are traumatized by the conclusion of the bridge crossing. This "arrival" (as a series of contrasting and fragmented sensations) is a kind of pro logue to the discovery of a metalinguistic place: "television city" - a city characterized by kinetic billboards retelling the most exaggerated moments of Western history as 'true-false' gameshow (THE WILDWEST SHOW). It is here that li pose as truths, illusions as reality, media as environment, and ideology as visual barrage. The game show, in its trivializing of horrow and war, is ap- propriately interrupted by a 9 minute commercial (A MESSAGE FROM OUR SPONSOR)

TITLE: AMERIKA

FORMAT: 16mm. colour sound

RUNNING TIME: approx. 180 minutes

COMPLETION DATES: 1972 - 1983

OVERVIEW AND CONTEXTS: AMERIKA is an experimental feature film comprised of 18 fragments/reels that are intended for varying projection orderings. Each mosaic fragment/reel focuses on an aspect of industrialized (Western) culture, history, myth, or landscape. As discreet, yet interconnected, elements the contributing films represent varied and unique approaches to formal and substantive issues. AMERIKA is a feature film devoid of character development, observable plot advancement, or conventional forms of filmic representation. In place of normative expression are substituted processes of image/sound construction, conceptual mappings of media and myth, and ideological critique and deconstruction.

The predominant characteristic of the entire film is that it draws from existing stock-footage archives, the iconography and memory banks of a media excessive culture, to locate its subject and voice(s). This terrain of pro-filmic facts is complemented by the author's footage, usually rendered from an equally anonymous point of view.

Further to this overview, it is important to note that this entire work was produced independently, without recourse to outside funding, and all aspects of its creation (except where specifically noted in the credits) were authored by the film-maker (without recourse to crews or special laboratory services). The technologies employed in the various fragments vary from audio and video synthesizers, optical printers, process cameras and matte-rephotography devices time-lapse cameras, to the more conventional 16mm camera and lens systems. The special technologies were also designed and built by the author. With the above in mind, it is not surprising that this film took 11 years to complete. It should also be not surprising to the reader/viewer that this film is a work of resistance and critique: resistance against mass communication illusionisms, sexism, and impoverishment of expression/meaning, and a critique of the ideology and media(s) of misrepresentation. It is not made for television broadcast networks nor fine-arts interests. It is a celebration of anarchy and creation in an era that is not that distant from the one that inspired Bosch.

VISUAL ESSAYS: ORIGINS OF FILM

- order of presentation:

LUMIÈRE'S TRAIN (ARRIVING AT THE STATION (9 min.) - 1979

MÉLIÈS CATALOGUE (9 min.) - 1973

SEQUELS IN TRANSFIGURED TIME (13 min.) - 1974

GHOST:IMAGE (11 min.) - 1976

FOR ARTAUD (10 min.) - 1982

STORMING THE WINTER PALACE (16 min.) - ~~in progress~~ 1984

AMERIKA

- order of presentation:

THE CITIES OF EDEN (9 min.) - 1976

SOFTWARE/HEAD TITLE (3 min.) - 1972

VORTEX (15 min.) - 1973

ATOMIC GARDENING (6 min.) - 1981

MOTEL ROW (PART ONE) (10 min.) - 1981

98.3 KHz: (BRIDGE AT ELECTRICAL STORM (PART ONE) (8 min.) - 1973

MOTEL ROW (PART TWO) (8 min.) - 1976

THE WASTELAND AND OTHER STORIES... (15 min.) - 1976

MOTEL ROW (PART THREE) (4 min.) - 1981

98.3 KHz: (BRIDGE AT ELECTRICAL STORM (PART TWO) (5 min.) - 1973

THE WILDWEST SHOW (13 min.) - 1980

A MESSAGE FROM OUR SPONSOR (9 min.)-1979

PHOTO SPOT/TERMINAL CITYSCAPES (11 min.) - 1983

REFRAIN (10 min.) - 1982

FILMOGRAPHY (16mm)

Al Razutis

SHORT FILMS

2 x 2 (dual screen, 20 min.) - 1967

INAUGURATION: (15 min.) - 1968

SIRCUS SHOW FYRE (7 min.) - 1968

POEM: ELEGY FOR ROSE (4 min.) -1968

BLACK ANGEL FLAG...EAT (15 min.) - 1968

1967 - 1969 (20 min.) - 1969

AAEON (25 min.) - 1970 Sound by Phillip Werren

LE VOYAGE... (9 min.) - 1973

THE MOON AT EVERNIGHT (9 min.) - 1973

VISUAL ALCHEMY (9 min.) - 1973 Cinematography by T. Westman

PORTRAIT (9 min.) - 1976

EGYPTE (14 min.) - 1977

EXCERPT FROM MS: THE BEAST (25 min.)-1981 Cinematography by T. Westman & Razuti

ARBEIT MACHT FREI (40min.) - in progress

ISLAND (AT WORLD'S END (20 min.) - in progress

FILM/VIDEO HYBRIDS

HYBRID (60 min.) - 1973 (collaboration with Gary Lee-Nova)

AURORA (8 min.) - 1973

WATERCOLOUR/ABSTRACT (6 min.) - 1973

FYREWORKS (4 min.) - 1973

SYNCHRONICITY (5 min.) - 1973 collaboration with Audrey Doray, Barry Truax

WAVEFORM (15 min.) - 1974

that presents the connotative codes of sexism and advertising rhetoric and subjects them to a kind of 'participatory' (on the part of the viewer) deconstruction. Cinema rhetoric, in its capacity to distort, fabricate, and persuade the viewer (of anything) is portrayed as a machine "out of control". The conclusion of the reel brings in (and implicates) the film-maker who, while assuming a defensive posture (to an anonymous caller) begins to reveal fragments of his biography and imaginary that are the underpinnings to the use of metalanguage in Reel Two. PHOTO SPOT/TERMINAL CITYSCAPES, as conclusion to Reel Two, acts also as an introduction to the many 'voices' and 'points of view' that will arise in the following reel.

SYNOPSIS REEL THREE: This reel concerns itself primarily with the construction of a "subject" (the viewer as film-maker) and the inevitable disintegration of both subject and discourse (the discourse of "Amerika"). Beginning with a further series of 'film study questions' (REFRAIN), we proceed to a debate concerning the film's lack of 'narrative' (EXILES, with its sarcastic view of words, music, and culture), and to a lengthy exposition on structure, landscape, violence, and voyeurism-sadism (THE LONESOME DEATH OF LEROY BROWN). It is here that many of the previous landscapes, points of view, and implied actions (the controlling gaze) are reworked into a landscape that slowly takes on a pathological persona: that of assasin and victim. Although a necessary ambiguity remains (as to whether any kind of actual pathology has been evidenced) the psychology of the characters displays a kind of derangement and violence that is "terminal". The film finally entertains a reflexive position vis a vis its own subject matter: 'is it figure or ground that the viewer has been presented?' In other words, was the 'message' that was predominating the 'important' element or was it that which was backgrounded/witheld? The exploration conducted in Reel Three (and conflated in varying cryptic-vulgar remarks in (FIN)*) questions not only the discursive strategy and contexts of AMERIKA, but also voice and truth, and the film itself as agent for any kind of possible or impossible effect. The reel is appropriately concluded with a "loss of transmission" and a final television 'sign-off' (O KANADA!) occurring in some distant space-time enviroment.

Al Razutis
Vancouver, 1983

ANALYSIS: A MESSAGE FROM OUR SPONSOR

A. Razutis

May, 1981

(AMERIKA continued)

EXILES (10 min.) - 1983

THE LONESOME DEATH OF LEROY BROWN (PART ONE & TWO) (25 min.) - 1983

(FIN)* (10 min.) - 1982

O KANADA! (5 min.) - 1976

--the above films were conceived, written, directed, filmed, sound and picture edited, timed, optical and process cinematographed, and original conformed by Al Razutis. The film/video hybrids exist in varying forms on both film and videotape; the above (comprehensive) credits apply to the film/video hybrids as well (except where designated credits are present).

FILM:

A MESSAGE FROM OUR SPONSOR 16mm. 9 min. colour sound 1978-1979

This short film/fragment is situated, in chronological order of completion, as reel #8 in the mosaic (i.e., no fixed order of projection) experimental feature film, AMERIKA. To date, 9 reels (of the intended 11) have been completed. AMERIKA is a diachronic mosaic of interpretive (and synchronic)'slices' -- each reel roughly corresponding to decades of the 20th century. As 'interpretive newsreel', the film's pro-filmic facts are derived from (and characteristic of) stock-footage visuals. (Even the original-photography sections are rendered in a stock-footage style.) A MESSAGE, typified by 60's and early 70's commercial ad iconography, was created entirely from advertising visuals and sounds, and features excerpts from TV ads, movie trailers, pornographic films, and miscelangeous(source unknown) stock shots. The selection was based on several thousand entries contained in the author's "Image Exchange" library. Intertitles and subtitles were added after the major phase of the editing was completed. A MESSAGE, as well as the other reels of AMERIKA, was independently produced, drawing on the film-maker's resources and not on any form of outside subsidy, or assistance.

ANALYSIS:

The film/reel is presented as an audio-visual discourse/text -- to be 'read' and re-viewed on both continuous and analyst projection formats. The written analysis is a necessary component of its (total) discursive nature. However, the two components (filmic and written) are not identical. A MESSAGE features a propensity towards 'psychological modes of address' and a didactic value residing in the experiential domains of image-sound construction/perception. The analysis complements these characteristics by focusing on the rhetorical/textual constructions, as portrayed by written language. Audio-visual signs and codes are not directly equivalent to verbal/written linguistic forms. Hence, the problem of 'film language', at the level of enunciation, as well as that of fiction ("the mythical organization through which ideology is produced and expressed"), has prompted me to extend the semiotic analysis into the realms of psychoanalysis, and semantic/systemic inquiry (as to form/substance and its ideological effects).

I can well appreciate the limitations of Semiotic inquiry in approaching 'film language', as totally constituted. Similarly, I view with some apprehension the tentative nature of psychoanalytic models (as appropriated to film). But what appears as a plurality of theoretical assumptions is in fact the necessary organization of the 'tools of inquiry' with the (explicit) intent of apprehending the dialectical nature of the film/text. As to analytical models, I offer a familiar caution: let the film determine and prescribe the method of approach. It would be both dishonest and simplistic to base the analysis on an extra-cinematic (for example, Marxist economic-determinist) model; it is more appropriate for the film itself, and its related cultural sources, to be the subject and locus of inquiry.

The film/text is no longer seen as 'an object', given and achieved, but as process, as itself a production, "specifically as a collocation of mechanisms for the production of meaning".[a] Therefore, if one is to avoid reifying it (as product), the merger of 'that which is studied' and the 'discourse that studies' should be a necessary undertaking.

---

a. Henderson, *Critique of Cine-Structuralism*.

ANALYSIS

"The message with an aesthetic content is an example of an ambiguous message, that brings the code into question, and within this context forges such a novel relationship between the signs that from now on our way of comprehending the possibility of the code will have to change..."

-- Umberto Eco
Articulations of the Cinematic Code

TERMS OF ANALYSIS:

For the purpose reading, analysis, and accessibility, the film/text is segmented into *expanded sequences, ordinary sequences, and sub-sequences,*[26] each corresponding to a thematic unity, and named accordingly. A MESSAGE is not a 'linear narrative' film, hence plot-advancement (and narrative *lexia*) is secondary to sequence development and sequence interrelationships. A primary characteristic of the *mixage*[27] is the presence of the multiple-image and multiple-sound dissolves and shot transitions via image 'solarization'. These transitions, unless specifically noted, are assumed to be constantly operating. Whenever possible, I have made note of the original ('intact') image-sound passage (i.e., the original commercial shot/sequence), as compared to the modified image-sound version. The term, *subliminal image* or *subliminal sound,* refers to those images/sounds that 'fall below the normal threshold of direct perception'. (For example, images that are virtually 'invisible', submerged beneath other images, or of one frame duration while a transition is effected.) These images were 'implanted' by me during the editing process as a further commentary on advertising practices. (They do exist, from time to time, in advertising, and have not only been documented by Brian Key, but myself, and media students. However, the sources that I had for this film did not feature subliminal images in any manner that could be considered 'premeditated', or consistent.)

At this point, I assume the reader is familiar with both filmic and semiotic terminology. Reviews of semiotic terms, and their usage, can be found in *Screen, vol. 14 (1973), Movies and Methods* (Nichols), etc.

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26. The term 'sequence' denotes a filmic passage that is a structural unity in terms of either theme, narrative-episode, or 'poetic' value. It is usually composed of several, or more, shots, the exception being a "sequence shot" which features a narrative or thematic unity in one long shot. "Expanded sequence" is my term for a unified and discrete 'complex of narrative/thematic elements', and is a structural form common to many experimental films.

27. As distinct from *montage* ('the building up of ideas through shot juxtaposition') or *decoupage classique* ('continuity editing, seamless editing'-featuring a 'cutting down' or shortening of the shots to economize and accelerate action), "mixage" features combinations of images (and sounds) in a dissolving, overlapping manner, -- an extreme form of continuity editi a technique akin to 'sound mixing'.

SEQUENCE 1: "Synchronic Signifier"

The first sequence begins by announcing the terms under which the film is presented. "We (the advertisers, and myself) interrupt (sever the 'normal' viewing circumstances) this program (ostensibly, a program of shorts) to bring you A Message (the sum of the 'ideology of misrepresentation') from Our Sponsor (Capitalism, and its neo-Fascist propaganda techniques). The connotative meaning(s) of this first inter-title is seen as predominating over the more familiar ('format') denoted content. Following the intertitle, a series of numerical countdowns, arranged in a achronological ordering, and interspersed with the first level of iconic signification (i.e., 'China Dolls') attest to both denoted and connoted 'synchronic' (and cinema-specific) representations. The 'clock-time' of the cinematic apparatus is presented in its most rudimentary, and 'structurally-materialist' form; the iconic-representational level is 'synecdochic', and surprisingly instructive on the ideological level. 'China Dolls' (the laboratory term for grey-scale/colour balance 'models') are used and evaluated strictly on the basis of their verisimilitude to the original 'reference'. Hence, as icon (in the Pierce sense of the word) they are the most basic of signs. It is surprising that even on this level (of rudimentary signification) the signification is already implanted with a *sexist* (derogatory) characteristic. The signification of 'China Doll' is modified by the introduction of the spoken word, "beautiful", and the qualifying phrase, "see, use your imagination." Introduced also, as metonymic inscriptions, are the parallel syntagmas: REPRESENTATION, SELL, and MESSAGE, BUY. The final shot of this sequence denotes that it is the viewer who is the subject of representation.

SEQUENCE 2: "Iconography of the (Reified) Woman as..."

Almost at the beginning of this sequence, the full force of 'mixage' techniques is seen: multiple levels of image and sound combinations effect a 'sensory onslaught'. Beneath the texture of jewels (signifying wealth and illusion) two contradictory elements appear in both image and sound tracks: desire and reification-denial. The look of desire is evidenced in the 'lesbian foreplay' subliminals, complemented by the spoken phrase:

"she deserves to have the eyes turn her way." But the desire is culturally prohibited, and therefore what "she deserves" is censure. (The context of that 'censure' is alluded to in the previous spoken phrases.) The contradictions in the spoken (desire and threat) are resolved in the visuals: the woman as an 'objectified and commercial commodity'. Thus, this second instance of "icon" (made explicit by the superimposed title) is one of 'resemblance to the reified object-reality' i.e., the 'look of glamour'. Thus, the economic determinant will be integrated with "system/codes" of representation. (We shall not return to either vaginal gratification or any (graphic) representation of the vagina until sequence 13-b, and with surprising 'results'.) The 'test' of these newly-emerging codes is to be delivered to a new group of subjects (as 'specimens'), each one of which is wearing a number as she walks towards the camera.

SEQUENCE 3: "Visual Pleasure and the Reality-Apparatus"

This sequence I have termed 'ordinary' in the sense that it necessarily conforms to its overt 'givens' (as a recitation of the details concerning the many 'looks' of glamour.) The opening section again serves to 'rupture' and distance the viewer, prior to the resumption of the representation-apparatus. The use of seamless editing tends to make the improbable plausible. Thematic unity supersedes factual wanderings. (Is it really important as to 'what is true', as long as it is reaffirmed?) We know immediately that these 'subjects' ("Willie", "Janet", and "Sue") are users of some commodity, and that this process has been going on for some time. (Note the placement of DIACHRONIC and SIGNIFIED in terms of their sound complements.) In contrast to the mere 'poses' of subsequence "A", subsequence "B" presents the "connotati of youthfulness and "aliveness" within the context of "becomming so" (e.g., by cleansing, and becomming 'literally' photogenic). Subsequence "C" introduces the (male) spectator's surrogate as an unpleasant representation, fixated as it were on his own discomfort (denoted value) and portraying masturbatory activity (connoted value). (He is a 'suitor' (note violinist), but an unsuitab one. He will, in effect, be suited primarily for 'voyeurism'.) The entire sequence contains some highly 'charged' images: intending to provoke scopophilic (if not voyeuristic) pleasures in the male viewers, and narcissistic pleasure in the female viewers. In the duration of several minutes, the

signifiers ('woman's face'), and its corresponding signified, become a variety of complex significations. The women-images become 'encoded' as subjects for male and female hallucinated desires: desires for youth, beauty, material power, and sexual gratification. The moment of erotic contemplation (the fetishized image of the woman freezing the 'look') is in evidence in subsequences A, B, and C. This enunciative apparatus is even more highly 'charged' in commercials because the 'look' is directed at the viewer, or 'includes' (sutures) the viewer. It is important to note that these 'looks' are the source of rampant imitation and tend to codify behavior and appearance. They also represent the 'mythic domain' (the ideology of women as objects of voyeuristic and masturbatory pleasures) that generates its own content-level (i.e., metalanguage) of expression.

The changing look (the evolving language-object of the film) is complemented by the formal device of positive/negative mixage. This technique renders the image as a specific element of an ongoing transformation (or 'beautification' in an ironic sense). Thus the technique is also signifying.

SEQUENCE 4: "Imaginary Double: That's Not Really You"

The placing of this sequence in the film's 'narrative' is important: it follows one of the most highly charged (connotative) sequences. The logic (for placement) is derived from advertising:' just when the viewer thinks he's figured it out, reverse yourself.' Another man is seen pulling on his ('foreskin') tie, but the sound announces "another woman". On the literal, denotated, level the message is clear: 'she's not real'. But this level is subordinate (again by virtue of repetition and connotative 'conditioni to the connotation of 'disavowal' and the erotic sense (a 'fetishism') that it generates. The disavowal sets the stage for masturbatory connotation, which is amply supported by the introduction of the nude man and woman (as elements 'within the narrative/diegesis') and the double meaning of the accompanying spoken phrases. The metalanguage content of this sequence is: "I don't want anyone to know, and I'll deny it if need be...but I'm wild in my fantasies."

The male voyeur/viewer identifies with the 'absent'/imaginary "other" and in so doing experiences the roots of a desire process which can lead to (when taken to extremes) in sadistic fantasies (e.g., 'violation of the passive/sleeping female'). The sequence ends with the camera moving away from an ostensibly 'satisfied' woman.

SEQUENCE 5: "The Pros and Cons of Social Intercourse"

This sequence introduces the concept of "rivals": rivals in fashion, imaginary rivals, and reified/objectified male and female rivals. Rivals are intruders in an otherwise 'intact' and sutured system/myth. The cosmetic-colour codes (and their adjectives: "hot", "bold", "true") are tied to (connoted) behavioral codes. Vaginal/penile (eye/neck) connotative signifiers are contextualized by re-introducing the masturbatory voyeur on the bus, his young male rivals, and the 'swinging blonde' (reminiscent of sequence 3) who is one of the 'pros'. The 'cons' (the incarcerated, depressed women and men) are portrayed as 'lacking' (in their ability to "make it with the pros"). Subsequence A (the lacking male) is compared to B (the lacking female), and the *denouement* of these mythic narratives is to be seen in subsequence C, the meeting of 'looks' of attraction and infidelity ("destined to be shared", yet abbreviated and unconsummed.)

SEQUENCE 6: "Description Makes All the Difference"

Descriptive signifiers/signifieds (syntagmas) proliferate within the paradigmatic of fluid/solvents. In this sequence, I have taken the liberty of 'punsmanship': the introduction of Brian Key's 'sexual subliminals' (e.g., the equivalents of "sex" inscribed in ice cubes) and their cinematic equivalent (subliminal intercourse shots). The assertions of the first part ("it just works better") are contrasted by the phobic references (connotative of dissease-venereal) that "play guests on every one".

SEQUENCE 7: "The Law of the Father: The Codes of the Phallus"

These 'laws' and 'codes' are presented as functioning within both

cinema-specific and cultural-material domains. Although rudimentary (simplistic), they do attest to the nature of (their) interconnections. The low-angle shot of the man is POV codification connoting 'importance' (and he is identified as being a "critic"); the high-angle shot of the woman connotes 'non-importance' (by her facial expression, she seems to be the 'cause of criticism'). If she is 'lacking', the integrating dissolve and subsequent shots may reveal the 'cause'. The 'possibilities' (of meaning) are as follows: her stomach protrudes (she is 'fat' or 'pregnant', and the silhouette pushes in her stomach); she is 'castrated' (SPECIFIC CODE) -- note the position of the semi-erect penis in the embraced woman -- but only in a symbolic (unnatural) sense; she fears the phallus ("this is the green monster") which is referrential to the (SIMPLE, CODE) racing car, King Kong, and the connotative meanings of "instinct", "great", "good".

SEQUENCE B: "Ideological Narrative of Have/Have-Not"

Phallic codes and food codes are interrelated in subsequence A; the phallus becomes an instrument of violence ('cutting with a blunt knife'), yet its meaning is also perverted to mean that it "becomes a revolution ...a whole new world of ease and comfort...". The IDEOLOGY super is meant to convey, in utmost irony, that 'need' and 'consumption' are the products of ideology. Those that 'have' can live 'without any of the work", without having to "eat leftovers"and fall prey only to "heartburn". MESSAGE/TEXT can function, and be understood, as an attribute of *SYSTEM/LANGUE* (language without 'speech' */parole.)* In other words, the 'narrative' (the "recitation of details") as 'message' could be fundamentally understood by simple contrast or by singular dialectic 'existent'. Speech/parole, and its articulations advance our understanding of the narrative/message content, and set the 'existent' in motion. The stereotypes presented in this sequence are dialectically opposed/contrasted with no indication (given) as to forward 'movement' of each existent.

EXPANDED SEQUENCE 9: "Rock Concert: Private and Public Codes of Sexual Conduct"

Taking a cue from from multi-instrumental (and repetetive) popular music, this sequence features an interractive complex of phallocentric-behavioral codes, synaesthetic formal/expressive codes, and explicit sexual representations/codes. The sequence is structured by 'refrains' and variations on theme. The 'poetic license' taken with the medium is especially visible in the omnipresence of sexual subliminal imagery. DE-STRUCTURING, as well as 'deconstruction', provides the impetus for commutation and variation; episodic arrangements/constructions provide the formal parameters of spatial/temporal organization. The variants on the codes of 'courtship' (between juvenile male and female) are internally 'sutured' by the use of pos/neg solarization techniques (giving an 'intact' sense to the disparate elements). The 'tutor signifier' for this sequence is the phallus. Its representations include a variety of iconic-indexical-symbolic forms: penis, camera POV (moving in and out), knife/cellery, hat/drumsticks, vegetables/beans, package of candy mints (as 'severed' phallus), flower on stem, cigarette, and the many (connoted) word references. The ritual of courtship, submerged and extracted from the public rock-concert circumstance (in itself a 'fiction'), is seen to be an amalgam/complex of penetration desires and castration fears. Women are portrayed as 'accesories to the facts'. And as accesories, they are seen to be 'destined' for the subservient-domesticated 'housewife' contexts which will emerge later. The male 'pleasure principles' (responsive to unconsummated love/relationships) will be seen as delivering future masturbatory fixations. On the metalanguage level, the rock-concert 'speaks' the language of 'courtship' by resorting to unconscious-erotive-sensual articulations of the gestural level of behavior. The codes of *kinesis* are the very codes of synaesthetic expression.

EXPANDED SEQUENCE 10: "Involuntary Servitude: Patriarchal Codes"

The intrusion of the Matriarch (the 'mother-in-law'), and her 'threat' to both woman and man, opens this sequence. The nature of this threat is that it may upset (or deny) the 'security' (and the 'intactness') of the

nuclear family institution and its attendant materialist-consummerist codes (the appearance of the home, the appearance of the well-behaved male, female). Subsequence B introduces a ('fictional') patriarchal authority-figure, who denounces (equally fictional) men for their slothfulness and selfishness. But in so doing, the 'guilt' is transferred to the woman, who "also had to get moving...so (she)scrubbed..." .Thus, one 'mythic level' informs the other. The SPECIFIC CODE of her conduct is centered around the home environs, in both symbolic and concrete forms. To make the home 'safe' ('concretely so'), and to make her symbolic 'womb' safe, she dissinfects everything. The disawoval of 'guilt', and its resultant fetishism for cleanliness, extends to clothing (bras, and red-stained clothes) and ideological 'phantoms' (war, starvation). For her actions, she is rewarded by praise ("It's great!") and idealized (note matted image) once again.

SEQUENCE 11: "Subliminal Seduction"

The apparatus continues, inexorably, to specify and concoct new levels of context and representation. The masturbatory fantasies in sequence 4 are now delivered to auto-erotic (mechanical) stimulation via phallic 'shaver'. (To be'venerated', as in seq. 10, is one thing, to 'consummate' is another.) The original (intact) scenario is joined with two (inserted) signification passages: subliminal images of fellatio and 'womb fantasies' (male swimmer). All three are examples of 'arbitrary' (coded and learned) signs, and thus mutually compatable. Their contradictory connotative values (masturbation/procreation) provokes further guilt and disawoval: "It does exactly what you want it to...right? wrong!" The use of synaesthetic mixage (as technique-signifier) in this sequence relates the narrative content to those sequences (3,4,6,9) that used the same 'manner of address'.

SEQUENCE 12: "The Tutor Code of Oral-Descriptive Signifiers"

Guilt is now extended into the public (recriminating) sector. Her "freshest mouth in town" is a well known phenomenon. The 'matriarchs', seated under an umbrella, seem to confer the 'blessing of envy.' But the

codifications of 'whoredom' are seen as competing with connotative codes of homosexuality (the two men rising into frame, pulling up their pants, adjusting their ties). The suggested message is: 'as long as you have the freshest mouth in town, he'll kiss you again.' In other words, as long as the woman retains that 'virginal look' and 'dis{infects herself' (by using the implied product), and submits to the "real test, performance", she can 'win her man back'. The 'whore-code' has another interesting feature: 'they are helpful ("come in anytime, we're approachable") in maintaining heterosexual-patriarchy.' The non-procreative heterosexist and homosexist codes (whose locus of intersection is penile-oral) are by no means exhaustively treated as to their syntagmatic/paradigmatic possibilities. They do, however, deliver themselves well to the upcomming auto-sexist (masturbatory) sequence.

SEQUENCE 13: "Rejection and Closure"

The 'post-coital' comment ("This zipper sure doesn't close like it used to"), a reference to the film's upcomming 'closure' as well, initiates a sequence that features rejection of both women (by men) and men (by women). The rejection of the 'secretary' (by the'board members') contains the connoted meaning that her 'breath/mouth is unpleasant'; the rejection of the male (his face hidden from view, his head tilted as if confessing/whispering in the woman's ear, her unpleasant reaction) is predicated on the revelation of 'intimate' information (as the last instance of the 'violinist' narrative). The exterior location (the train station) signifies that one of them is departing. The sexual- oppositional codes have reached a state of irreconciliation. Therefore, in subsequence "B" (prescribed by: "Now let's try again...") the normally procreative image of child-birth is displaced by a 'symbolic' return of the infant to the womb and male masturbation. The previous sexual oppositionals result in a non-procreation, a *literal and symbolic negation of it* (rather than the simple 'reversal of the signification'). The 'reverse birth' shot is both "bracket syntagma" (sign) *and* "autonomous shot" (symbol). It represents the passage of language *from the semiotic to the symbolic.*

(In the previous sections I have been using 'symbol' in the Pierce-semiotic sense of the term.) Thus, the CINE-RHETORIC of the 'ideology of mis-representation' has arrived (by the instruments at my disposal) at both its iconographic-representational counterpart: masturbation (and the ideology thereof) and the symbolic negation of life.

SEQUENCE 14: "Diachronic Signified"

The materials of the cinematic enterprise ("end", etc.) signify the impending'physical' end of the discourse. The viewer is reminded that the representation-image has been of 'themselves' as consummers. The 'residue', as voice-over mixage, testifies to the DIACHRONIC nature of the media image and its influence in our 'changing world'. It is almost with a sense of resignation that this 'message' is delivered.

SEQUENCE 1: "SYNCHRONIC SIGNIFIER"

Time-Track	Image-Track	Sound-Track
0:00 (min/sec)	Head-Sync	
0:09	" -- we interrupt this program to bring you A Message From Our Sponsor"	
0:14	Academy (SMPTE) leader: 8...7...	
	'China Doll' in negative*	
	"SYNCHRONIC"**	
	4...3...8...7...	
	second 'China Doll' - #6 in corner	
	5...4...	
	third 'China Doll' and Kodak logo	
	7...	
	first 'China Doll'	
	6...5...	
	Subtitle: "Please Stand By..."	
0:31	4...8...7...	
	first 'China Doll' (solarized)	(Female) "Beautiful
	"REPRESENTATION"	
	"SELL" (one frame)	
	6...5...4...3...2	Sync. tone (1 frame)
	fourth 'China Doll' and grey scale	(F) "See, use your imagination!"
	"MESSAGE"	
	"Buy" (one frame)	
0:35	Woman turns, takes flash-picture 'of viewers'.	

Notes:

* The term, 'China Doll' refers to a still (CU) representation/photo of a female model. This representation, in terms of grey scale and colour values is used as 'reference' for timing/grading. I have retained the industry-lab name (itself a *sexist* term) for purposes that will become clear during analysis.

** All titles (intertitles in capital letters, subtitles in lower case) are

SEQUENCE 2: "ICONOGRAPHY OF THE (REIFIED) WOMAN AS..."

	0:36	diamonds and jewels (multiple dissolves) ...	Music for "TV Guide" logo
	0:39	(superimposed) subliminal images of 'lesbian' foreplay...	
	0:45		(Male) "Put an onion an a secretary...and a conferenc room full of executives...
	0:48	"IMAGE/SIGN" (superimposed over "Canada" coin) ... "SPONSOR" (super)	she deserves to have the ey turn her way..."
	0:53	"SYSTEM/CODE" (super)	
	0:54	coin dissolves with model's face -- "ICON" superimposed; Model's head dissolves with coloured lights... dissolve to a group of women, each wearing a number, walking toward the camera.	(F) "And right now is the ti to get your golden touc and so...a shy whisper colour..." (M: "A post mortem...here's what ca happen") F: "The innoc eyes of love...a shy wi per of colour...the inn eyes of love"
	1:05		

(ORDINARY) SEQUENCE 3: "VISUAL PLEASURE AND THE REALITY-APPARATUS"

SUBSEQUENCE "A"	1:06	"ORDINARY" (superimposed) "Please Stand by..." "SEQUENCE" 7...first 'China Doll'	Sound of sprocket holes. (Sound overlap) (F) "I'm Wil
	1:08 **	Woman presents herself to camera; second woman (#4) presents herself to camera; third woman (#1) presents herself to camera.	I tried it nineteen times... I'm Janet, and I'm a four-ti user...I'm Sue, and I'm new the game..."

Note**: sound & picture "intact', as per original.

	1:18	"DIACHRONIC"	(M) "Time after time..."
		"SIGNIFIED"	(F) "It's true."
		Women presenting, turning,	(F) "Beautiful."
		in superimposed overlays...	(F) "Tender melting Londo eyes..."
		Woman (CU) sucking on straw,	(M) "It doesn't matter how
		looks at the 'viewer':	you wear your skirt..
			(F) "The innocent eyes of
	1:28	Women turning, laughing --	(F) "The shy whisper of co
		(super) tilt up woman's	the innocent eyes of
		leg protruding from'slit'	(F) "Tender melting London-
		dress... woman washes face...	eyes..."
		"REPRESENTATION"	(F) "I tried it, it's true!
			(F) "It's true!"
SUBSEQUENCE "B"	1:33	"CONNOTATION"	(M) "And feel young again..
			(M)("Usually with just soap water...") Repeats
	1:39	"REAL/PHOTOGENY"	(M) "Now there's drying."
		Woman contemplates'the condi-	(M) "Splish, splash...happy
		tion of her skin',"SIGNI-	leaves you feeling cle
		FICATION" (supered over	(M) "You stay alive, stay a
		eyes and soap suds);	(M) "Happy face, leaves you
		"SPECIFICITY" (over bathing)	feeling clean...soft"
	1:53	Woman presents her hair, and	(M) "When a woman over thir
		tosses it backwards	can have a complexion
			soft (crowd roars)...l
			at that condition...lo
			at that soft colour...
SUBSEQUENCE "C"	1:56	"INDEX" (superimposed)	Violin music
		** Violinist sits in the fore-	(M) "Please, a little sympa
		ground, man pulls on his collar	for this guy, he has i
		in the background --violinist	rough..."
		shakes his head;	(M) "All you need to know
		CU of man rubbing his neck;	the label."
		"SIGNIFIED" (supered) over	(F) ("Priceless!")
		woman combing her hair...	(M) "And the result is a c
		Multiple supers of women	plexion that's sure t
		turning their heads in hair	turn the eyes your wa
		display...tilt up legs supered...	(F) "I tried it...it's tr
		** sound/picture 'intact'	(repeat)

2:16		continue supers...	(M) "She's earned a tropical cruise."
		Model removes glasses, addresses viewer...	(F) "You'll know it's true."
			(M) "She deserves to have the eyes turn her way..."
		hair flipping acrobatics...	Crowd roars
		"SEQUENCE"	(M) "Ooh, nice bounce!"
		"CLOSED"	

SEQUENCE 4: " IMAGINARY DOUBLE: THAT'S NOT REALLY YOU"

2:23		Man's reflection on table surface -- he pulls on his collar & tie...	(M) "What other gift does so much for a woman...what other woman?"
	**	Neg/pos woman 'in white' strolls through garden...	(F) (Musical) "That's not really you...quiet and finding fragrance of lotus is you ...not really you... you're roses, around you the scent of red roses.. not really you.".(repeat)
		dissolve to woman sleeping	
		neg. nude torso of woman	(F) "You're lovely...not really you...you're fresh and free...that's not really you..."
2:50		"NARRATIVE/DIEGESIS" -- supered over neg. male rubbing woman's breasts...	(M) "The marvel breast process that never needs ironing (repeats)
			(M) "Fantasies, to brighten your nights..."
			"Nutcracker" music

(EXPANDED) SEQUENCE 5: "THE PROS AND CONS OF SOCIAL INTERCOURSE"

SUBSEQUENCE "A"	3:02	** "SOUND/SIGN" -- supered over money rolling...	Musical notes
		feet (ECU) running...	(F) "Hey beautiful...want to answer the door?"
		money rolling...	(M) "No, hum tissues are out love...hot pink, bold go ...true blue...avocado green..."
		zoom in on woman looking at viewers...	

** picture 'intact', sound 'altered'

			(ECU) eyes are painted with mascara...	
			"ACHRONOLOGICAL" -- supered over violinist and man on bus...	(M) "Please, a little sympath
				(M) "Beautiful"
			(EXT.) Young woman kisses man...	Musical door chimes
			(CU) Man on bus pulls on his tie..."TEXT" superimposed...	(F) "Hey beautiful, want to answer the door?"
SUBSEQUENCE "B"	3:20		Woman in car, male approaches...	(F) "Hi... (M) "mmmm..."
			two shots of 'depressed' women doing housework (camera zooms in on them)...	(M) (Crowd ambience) "To make with the pros...to make with the pros...to make with the pros..."
			repeat shot of woman in car, man gets in...	(F) "Hi..."
				(M) "Mmmm...did you wash your hair just for me?"
				(F) "Ah, ha..."
SUBSEQUENCE "C"	3:35	**	"EPISODIC" -- supered over two 'lovers' walking on a terrace at sunset...	(M) "Wind-swept rock garden, on a soft summer night, a fragrance destined to be shared..."
			woman at restaurant looks at waiter; he looks back...	
			(CU) woman's reaction shot...	
			trays of food on 'asecmbly line'...	(M) "When a woman over thirty

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SEQUENCE 6: "DESCRIPTION MAKES ALL THE DIFFERENCE"

	3:50		*"DESCRIPTIVE"* -- supered over contents poured from can...	(M) "But it took too long to dissolve...all we got was fizz..." (repeats)
			"SEQUENCE" -- supered over pouring	(M) "The flavor's so fresh...
			"DECOMPOSITION" -supered over pour; subliminal superimpositions of vaginal penetration...	(M) "It just works better..."

** picture/sound 'intact'

	dissolve to bubbles...	(M) "But it took too long to
	subliminals continue...	dissolve..."(repeat)
	"REPRESENTATION" -- supered over	
	pouring...	
4:03	shot of spiders dangling	(M) (Musical) "Creepy crawlers
	shot of man reacting...	are so much fun...playing
	brief shot of cat hissing...	guests on every one..."
	"DIE" (1 frame)	
	shot of man presenting orange	(M) "And that makes all the
	drink...he drinks (camera zooms in)	difference!"
	shot of food on trays...	

SEQUENCE 7: "LAW OF THE FATHER: THE CODES OF THE PHALLUS"

4:12	** low angle shot of man with	(F) "Tell me, as a critic, how
	glasses ('the critic')...	will you review this mar-
	high angle shot of woman, ner-	velous book in your colum
	vously reacting to his gaze...	cont...
	dissolve to woman pushing in	(M) "As a critic...I'm concerned
	her stomach (girdle)...	that the plot is all too
	"SPECIFIC CODE"	obvious..."
	nude woman is raised by man...	(M) ("This is the green monster
	his penis protrudes between her	(M) "Now the real test...per-
	spread legs...	formance!"
	"SYMBOL" (over 'phallic' car)	(M) (Critic cont...) "Well worth
	"SIMPLE"	neo-primitivistic instinct
	"CODE"	
	shot of 'coffee-club' males...	(M) "It's great!"
	matte 'push-over' of spoons...	(M) (Critic) "However..."
	(Wide) "King Kong" opens the	(M) "It is good!"
	gates...	

** picture/sound 'intact' for 'critic' scene

SEQUENCE 3: "IDEOLOGICAL NARRATIVE OF HAVE/HAVE-NOT"

SUBSEQUENCE "A"	4:30	"MESSAGE/SYSTEM/LANGUE" -- supered over pouring soup... "King Kong's" (ECU) face, drawing near... (ECU) man's face, eyes studying 'something' with magnifier... pouring, displaying soup... (CUs) men and women eating...	(M) "All together, sixteen different, delicious... "fat noodle, fat noodle... "You get big fat noodles, because every noodle is a big fat noodle... "You get chunks and chunks of chunky chicken..."
SUBSEQUENCE "B"	4:39	(ECU) tomato is cut...	(M) "And the sheer frustration of a blunt knife..."
		(Wide) starving children displayed before camera "IDEOLOGY" (supered)	(M) "Becomes a revolution... a whole new world of ease and comfort..."
			(M) "Chunks and chunks of chunky chicken..."
		overweight woman eating and watching tv -- she nods...	(M) "And the sheer frustration of a blunt knife..."
			silence
SUBSEQUENCE "C"	4:55	(ECU) knife cutting chicken... matte-push-over of spoon... shots of dishes w/noodles...	(M) "Without any of the work.. (M) "No fussing...no waste..." (M) "And you don't have to eat leftovers..."
		"DESTRUCTURING" (CU) man frowns... (Med) tilt up of woman dancing...	(M) "Flavors to delight any food lover..." (M) "That burning sensation... food lovers fall prey to heartburn..."

(EXPANDED) SEQUENCE 9: "ROCK CONCERT: PRIVATE AND PUBLIC CODES OF SEXUAL CONDUCT"

5:07	"SOUND/SIGN" -- supered over dissolve from dancer to fountain... various shots of band, crowd... title supers: "SYSTEM/CODE" "COMPLEX" "DE-STRUCTURING" camera zooms rhythmically... "EPISODIC" (super) "SEQUENCE" camera follow pans on young couple... subliminal supers of sexual inter-course...	Rock music and crowd ambience
5:19	solarized shot of woman fellating man...	(F) "Now I had to get moving.. I felt proud, and so did Charlie..."
5:30	(Wide) shot of crowd negative shot of woman fellating man (synchronized w/music)... "DENOTATION" -- supered over dark-blue toy car (remote) controls... neg. shot of fellatio... (ECU) knife cuts cellery... (superimpose) "TROPE" shot of young boy and girl... (ECU) neg. shot of woman and penis... shot of boy and girl, they kiss, she frowns... shot of band... subliminal supers of penetration... camera rhythmically zooms in/out on band... (Med) shot of man (behind woman) moving in same rhythms (intercourse)...	Music repeats...

		(superimpose over the previous) "IMAGE/SIGN"	(F) "Ground right through to the inside..." (repeats
		shot of boy & girl at concert...	(M) "If he kissed you once... will he kiss you again?"
		(superimpose) pouring vegetables/beans...	(F) "They get into just about everything..."
		(superimpose) "SYSTEM/CODE" continuing shot of man penetrating woman from behind...	
		"SIGNIFIER" (superimposed over lights) rapid montage of lights, fellatio... girl holds up ('severed') phallic form... reaction shot of boy ("wow!")...	
		(superimpose) "SPECIFIC CODE" shot of old woman, holding flower, contemplating...	
		(superimpose) "SIGNIFICATION"	
	**	(Wide) two-shot (camera zooms in) of male and 'unattractive' female, sitting in an empty restaurant -- she has a cigarette, he seems to be staring at it -- she is anxious, tugs at his coat sleeve...	(M) "A little sympathy for this guy...why does s girls still have it rough...why haven't they given their guys a...."

(EXPANDED) SEQUENCE 10: "INVOLUNTARY SERVITUDE: PATRIARCHAL CODES"

SUBSEQUENCE "A"	6:00	**	(CU) Woman at phone, addresses audience...	(F) "My mother-in-law's coming!"
				Music
			(Wide) (undercranked) woman runs about the room...	
			"CONNOTATION"	
			"MATERIALISM"	
			(Dolly shot) men in bathrobes...	

** sound/picture 'intact' , except where noted

		"CINE RHETORIC"	(M) "They're killers...well almost anything you can name..."
SUBSEQUENCE "B"	6:19	various shots of men in World War II costumes -- 'protagonist' makes a speech...	(M) "You're not soldiers... you bought this mission in a pay off...you're hoods. common garbage-canned hoods!..."
SUBSEQUENCE "C" (A + B)	6:28	(Med) shot of woman at window, she 'nods'... (CU) dishes placed into washer... (CU) door closes... "ORDINARY" (supered) "INCIDENT" (supered) (ECU) woman turns on sanitizer... (CU) woman spills contents of bottle on floor...wipes up...	(M) ("Right?...now you're safe (M) ("protagonist') "All right so here it is in your language...you're in baby and you dont get out!" (M) ("What other gift does so much for a woman?") (M) ('protagonist' cont...) "We're going through with this mission...and the first man that fouls up or dissobeys an order...
SUBSEQUENCE "D" (A+B+C)	6:46	"SPECIFIC CODE" (supered over wiping up the spilled contents) (ECU) aerosol spray... (ECU) light socket (ECU) spray artillery shot... explosion on the ground... (ECU) spray (ECU) wood post... (ECU) knife cuts green tomato... spray (ECU) wiping off the fridge... (FCU) green carrots... (FCU) wipe (ECU) wood railing -- "SYN" supered... (Wide) shot of seated woman with box of tissue paper...	(F) "Now, I had to get moving so, I scrubbed off..." (M) "One little squirt..." (F) "Beautiful..." (F) "Priceless..." (M) "Walls... "Doors... "Floors... "Cribs... "Ribs... "Now you're safe...from most really serious hazzards..."("all kinds of things")...one little squirt..."

	(ECU) spray	
	(ECU) wipe	
	(ECU) spray	(M) "Doors...
7:03	Zoom in on stain, wipe...	(M) "Wrong!"
	(EXT. WIDE) Indian women holding starving children...(supered) "LOGY"	(M) "Not 'till you do something about...bibs..."
	fireworks...	
	(ECU) aerosol sprayed at camera...	
	(CU) hands tugging at bras...	(F) "Really, really clean... really, really clean... (repeats, and mixed with:)
	(CU) holding up stained clothes...	
	(super) "ORDINARY"	(F) "This way, that way...still stretches like new, so... (repeats)
	(CU) coffee-drinking man...	
	(INT. MED) four men with coffee cups, woman's face is matted in...	(M) "It's great!"
	(super) "MESSAGE"	(M) "To Alice!"
	(reaction shot - Med.) woman scrubbing floor...it is pristine...	(M) "And that makes all the difference..."

SEQUENCE 11: "SUBLIMINAL SEDUCTION"

7:20	** "TEXT" (supered over:)	(M) (with music) "It doesn't matter how long you wear your skirt, or how short.. you need a lady's shaver..
	woman, reclining, rubbing herself with ('phallic') shaver...	
	superimposed subliminals of two women fellating man...	(M) ("Fantasies...to brighten your nights.")
	master shot is joined by supered man in pool -- he raises his toupe...	(M) "With a protective head.. at the perfect shaving angle..."
	woman peels banana and turns...	
	another woman removes glasses, looks...	
	woman with banana turns, eats, and poses...	

** first sound text corresponds to picture (master shot) text

(CU) reaction shot of man, he looks...	(M) "It does exactly what you want it to...right? wrong!"

SEQUENCE 12: "THE TUTOR CODE OF ORAL-DESCRIPTIVE SIGNIFIERS"

7:41	** (EXT. WIDE) bikini-clad woman walks along the beach, camera follow-pans and zooms in on conversation between two middle-aged women...	(M) "Know what people say about her?...know what people say about her?"
		(F) "She has the freshest mouth in town."
	(super) "DESCRIPTIVE" "SIGNIFIER"	
	(Med) two men rise into the frame, pulling up their pants...	(M) "Does have the freshest mouth in town..."
	(CU) hand straightens tie, pulls on it...	(F) "Do your stuff!" (repe
	(ECU) woman's mouth chewing gum...	(M) (echoed) "The tingle to
	(superimpose) woman with banana, turning, posing...	you your mouth is fresh your breath is fresh... you too can have the freshest mouth in town!
	(dissolve to) boy and girl kiss...	(M) "He'll kiss you again (repeat)
	(dissolve to) girl embracing, kissing,	(M) "Now, the real test! Performance!"
	(ECU) 'bikini' girl -- camera zooms back, she walks off with young man...	(F) "That's all it takes..
	(MED. follow-pan) woman talking, walking along sidewalk...	(F) "So you can see why we known as the helpful bank...come in anytime we're approachable."

** sound/picture 'intact' for first shot only

SEQUENCE 13: "REJECTION AND CLOSURE"

SUBSEQUENCE "A"	8:10	(ECU) male hand struggling with zipper (on woman's dress)...	(M) "This zipper sure doesn't close like it used to..."
	**	(INT. WIDE) woman ('secretary") enters board meeting and is 'rejected' by all the males...	Room ambience and names called.
		three close-ups continuing the above action...	(M) "Now let's try again..."
			silence
		(EXT. WIDE) woman and man embrace at railroad station, violinist plays and shakes his head -- the woman portrays 'discomfort'...	
SUBSEQUENCE "B"	8:24	(CU) man, with face covered, and without shirt, looks down...	
		(MED.) neg. shot of childBirth in reverse -- the shot slowly becomes 'solarized'...	Music and crying, in reverse...
		(CU) continuation of reverse childbirth...	
		(MED) nude man, with leather bracelets, sits and masturbates...	(M) "It does exactly what you want it to...it does exactly what you want it to
		"CINE-RHETORIC"	
		(CU) male hand on penis, masturbating...	

SEQUENCE 14: "DIACHRONIC SIGNIFIED"

9:06	black
	"X X X X"
	"PICTURE"
	black

9:09	"NO." (sideways)	
	"PROD" (sideways)	
	black	
	"END"	
	black	
	woman with flash-camera, takes picture of 'viewers'...	
9:10	"TEXT/MESSAGE"	Sound-tracks A & B superimpose
		A: (M) "Sure doesn't close li it used to...right? wrong...and you can prove it with people.
		B: (M) "The unflinshing eye o television...that changed our world and our way of thinking.. that changed our worl
9:14	"copyright 1979 A. Razutis"	(F) "yeah..." (as a sigh)

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Ontario Ministry of Consumer and Commercial Relations — Theatres Branch

Board of Censors

SUMMARY REPORT

DATE: MAR 28 1985

PRESENT FOR DISCUSSION AND REVIEW

INITIAL WBD AM AM. 07. SB K.S.

TITLE: (as appears on screen)

AMERIKA

COUNTRY OF ORIGIN:	DISTRIBUTOR:	NUMBER OF REELS/ MINUTES
CAN	CFAVAS	158 min

ORIGINAL	☐	COLOUR	☑	35 mm	☐	FEATURE	☑
NEW VERSION	☐	BLACK & WHITE	☐	16 mm	☑	SHORT SUBJECT	☐
APPEAL	☑			8 mm	☐	TRAILER	☐
SUBTITLES	☐			VIDEOTAPE	☐		
DUBBED	☐						

STORY LINE:

CYNICAL VIEW OF THE STATE OF LIFE IN AMERICA

This is Exhibit "F" referred to in the affidavit of DAVID POOLE sworn before me, this ..... day of ..... 19 85.

..... A COMMISSIONER, ETC.

OBSERVATIONS/CONCERNS:

THIS FILM COULD BE RATED AS "RESTRICTED" IF THE FOLLOWING ELIMINATIONS ARE MADE: SEE OVER. NOT APPROVED IN ITS PRESENT FORM. [REASONS BELOW]

*NB FILM ALSO APPROVED FOR DISTRIBUTION IF ELIMINATIONS ARE MET.

☐ Film falls within current Community Standards for:

☐ Normal Guidelines should be set aside to treat as:

- ☐ **Family** (Suitable for all)
- ☐ **Parental Guidance** (Advisory Classification)
- ☐ **Adult Accompaniment** (Restricted to Persons 14 & over unless accompanied by an adult.)
- ☐ **R cted** (to sons 18 & over)
- ☐ **R cted Sex Film**
- ☐ Information Piece (see reverse for Info Piece)
- ☐ **Eliminations** (see reverse for eliminations)
- ☐ **Not Approved**

Majority Decision - Board Members

INITIAL WBD AM. AM. M. 07

REASONS:

FOR ELIMS! PRIOR TO APPROVAL -

- GRAPHIC, EXPLICIT FELLATIO
- GRAPHIC, EXPLICIT PENETRATION
- GRAPHIC MASTURBATION

FOR RESTRICTED:

- COARSE LANGUAGE
- [illegible] SIMULATED SEXUAL ACTIVITY
- FULL FRONTAL NUDITY
- OCCASIONAL VIOLENCE

Eliminations:

R1

- AT 43 + 44 - GRAPHIC FELLATIO (2 SCENES)

R2

- ~~AT~~ 38 - GRAPHIC FELLATIO (4 SCENES)
- AT 39 - GRAPHIC PENETRATION (REARENTRY) (2 SCENES)
- AT 42 - GRAPHIC MASTURBATION - MALE (2 SCENES)

Information Piece:

Minority Position:

Elimination of erect penis - 07.

INIT

71

Court File No: 409/85

SUPREME COURT OF ONTARIO

(DIVISIONAL COURT)

BETWEEN:

ONTARIO FILM AND VIDEO APPRECIATION SOCIETY

- and -

Applicant

ONTARIO FILM REVIEW BOARD

Respondent

SOLICITOR'S CERTIFICATE OF TRIAL RECORD

I, SOPHIA SPERDAKOS, Solicitor for the Applicant certify that the trial record contains the documents indicated below in the following order as required by clauses 48.03(1)(h):

[x] a table of contents, describing each document by its nature and date;

[ ] a copy of any jury notice;

[x] a copy of the pleadings, including those relating to any counterclaim or crossclaim;

[ ] a copy of any financial statement delivered under rule 70.14 or 70.04 or waiver of financial statements filed under subrule 70.14(3);

[ ] a copy of any demand or order for particulars of a pleading or financial statement and the particulars delivered in response;

[ ] a copy of any notice of amounts and particulars of a pleading of special damages delivered under clause 25.06(9)(b);

[ ] a copy of any order respecting the trial; and

I ALSO CERTIFY:

[ ] that the time for delivery of pleadings has expired;

[ ] that has failed to deliver has been noted in default;

[ ] that judgment against the defendant whose name is has been obtained;

[ ] that the action against the defendant whose name is has been [ ] discontinued [ ] dismissed

DATED AT: Toronto

ON: ____ day of August 19 85

Sophia Sperdakos per Lynn Kiyo

Signature of solicitor or party

KING & SACHS
Address: 111 Richmond St. W.
#320, Toronto
Telephone # : (416) 366-7392

E

Court File No. 409/85

SUPREME COURT OF ONTARIO

(Divisional Court)

B E T W E E N :

ONTARIO FILM AND VIDEO APPRECIATION SOCIETY

Applicant

- and -

ONTARIO FILM REVIEW BOARD

Respondent

A F F I D A V I T

I, Jonathan Lewis Freedman, of the City of Toronto, in the Municipality of Metropolitan Toronto, MAKE OATH AND SAY AS FOLLOWS:

1. I am a Professor in the Department of Psychology at the University of Toronto. Attached to this my Affidavit and marked as Exhibit "A" is a true copy of my curriculum vitae.

2. I hold a Bachelor of Arts Degree from Harvard University, a Master's Degree in Psychology from Yale University and a Doctorate in Psychology, also from Yale University. From 1961 to 1969, I was an Assistant and then Associate Professor in the Department of Psychology, Stanford University. From 1969 until 1980, I was a full Professor in the Department of Psychology at Columbia University. From 1980 to 1986, I was the Chairman of the Department of Psychology at the University of Toronto.

3. I have written numerous books and articles on various aspects of psychology and my textbook, Social Psychology, now in its fifth edition, is widely used as a basic text for psychology courses in colleges and universities throughout North America. I have read the Affidavit of Dr. William L. Marshall, sworn May 29, 1986, filed in this matter.

4. In particular, I am familiar with the research on the effects of the exposure of the population in general to sexually explicit material and to violent material in the media.

5. In my opinion, there is a serious problem with the applicability of the research on the effect of sexually explicit material. Virtually all of the research has been done in the artificial environment of the psychological laboratory, usually with undergraduate university students who know that they are in an experiment. I believe that the research tends to exaggerate the negative effects of exposure to sexual material rather than minimize these effects. As I shall discuss at greater length later, research on sex offenders is perhaps even more suspect, because of the lack of necessary controls and reliable measures. Accordingly, it is my opinion that one should be extremely cautious in assuming that these research results provide an accurate picture of the effects of exposure to material with sexual content, and in particular, should not be taken as scientific evidence that such exposure is harmful.

6. However, if one were to accept the research findings, it would then be essential to distinguish between the effects of exposure to sexual material (whether or not explicit) that contains no aggressive content and sexual material that does contain aggressive content. With a few minor exceptions, the

research has failed to find any harmful effects of exposure to any kind of sexual material as long as it does not contain violence or aggressive content. In particular, the findings have been that exposure to any form of non-aggressive sexual material not only does not increase aggressiveness toward women, but in some instances decreases it.

7. This conclusion is shared by the acknowledged experts in the field. In extensive reviews of the literature, both Malamuth and Donnerstein state that non-aggressive sexual material does not increase aggressiveness toward women. In the papers by these two men that are included in Marshall's Affidavit, they cite research on pages 35, 68, 70, 76 and 77 that shows no negative effects of this kind of material. Zillmann and Bryant, also cited by Marshall, agree with this conclusion (page 116). One simple quotation summarizes the opinions of all of these experts. On page 78 Donnerstein states: "While it seems that certain types of pornography can influence aggression and other social attitudes and behavior toward women, this is not the case for other forms of pornography, especially nonaggressive pornography." Donnerstein goes so far as to suggest that it is

only the aggressive content that has harmful effects, and that the sexual content is unrelated to aggressiveness toward women (page 79).

8. In their work on prolonged exposure to sexual material, Zillmann and Bryant found that massive exposure actually reduced the likelihood of aggression toward women following sexually explicit material. In other words, at least in terms of aggression, exposure to sexually explicit material had less and less effect on people rather than having a cumulative effect.

9. Research using crime statistics has found no evidence that exposure to pornography has harmful effects. In the paper relied on by Marshall, Court argues that because increases in the incidence of reported rape occurred during a period of relaxed laws against pornography, the former was caused by the latter. In my opinion, this conclusion is unjustified. It is widely accepted that only a small percentage of rapes are reported to the police. The period after 1970, during which laws against pornography tended to be relaxed, was also the period of the growth of the women's movement. One impact of this movement was

to encourage and support women in the reporting of sexual assaults. Therefore, it seems very likely that the rate of reporting of rape increased. This alone could account for the apparent increase in the incidence of rape. It could also explain why in some communities the incidence did not increase as much, because those (e.g. Singapore) tended to be very conservative communities in which the women's movement had less impact. In addition, the rates of all violent crimes tended to increase during this period and it is not clear from Court's data that the rates of rape increased significantly more from a scientific point of view. Thus, it is my opinion that Court's analysis is incorrect and that his data provide no evidence of a causal relationship between the availability of pornography and the incidence of rape. Finally, it should be noted that even Court suggests that if there is an effect, it is due to the availability of violent pornography, not sexually explicit material without aggressive content.

10. In my opinion the research on exposure of sex offenders to pornography has little value in this discussion and certainly does not indicate that such exposure causes sex offenses. In the

first place, Goldstein et al found that sex offenders were exposed to less pornography during their early years and Marshall found no difference between sex offenders and normals in amount of exposure during this period. Thus, it is clear that, if anything, offenders see less pornography during their formative years and therefore there is no reason to believe that exposure to pornography caused their deviant behaviour.

11. In addition, all of this work suffers from problems with the measures that were used. Retrospective reports are notoriously unreliable, particularly when they involve periods many years earler as these do. Especially in Marshall's study, the offenders might have been motivated to report high levels of current exposure whereas the normal control subjects might have been reluctant to report viewing pornography. This difference in willingness to report might have caused the differences in amount of current exposure that was reported.

12. Having read this and related work carefully, it is my opinion that none of it provides any evidence for a causal link between pornography (however defined) and sexual offenses. Even

if we accept that rapists, for example, view more violent pornography than do normals, that would not be scientific evidence that the pornography makes them more likely to commit rape. It is just as likely from the evidence that it reduces the likelihood of rape as that it increases it.

13. I have read Dr. Marshall's Affidavit and the accompanying research reports. I am of the opinion that his assessment of the research is incorrect. As noted above, he does not distinguish sufficiently between aggressive and nonaggressive pornography, and there is no convincing evidence that the latter has harmful effects; he places undue weight on Court's analysis, which is flawed; and he relies heavily on his own research, which has the problems cited above and which, in any case, provides no evidence of a causal relationship between pornography and sexual offenses.

14. I have read the criteria in section 21 of O.Reg. 56'85 and considered how they relate to my opinion about the research on the effects of exposure to various types of sexual material.

15. I have no opinion on categories a or b. There is some evidence that exposure to the material described in these sections might be harmful, but the findings are inconsistent. The bulk of the work that does find negative effects has been done in the laboratory, and it is doubtful whether it should be applied to the real world.

16. I have no opinion on categories c, d, f or h, because I am not familiar with any relevant research.

17. It is my opinion that category d (explicit depiction of sexual activity without aggressive content), and category g (undue emphasis on human genital organs) describe material that has not been shown to have any effect on aggressive behavior or any other harmful effects.

18. I have reviewed the clinical history of the individual discussed in Professor Marshall's Affidavit. In my opinion, that clinical history does not assist in the analysis of causal relationship in that particular case or generally.

19. I make this Affidavit in support of the Applicant's position and for no improper purpose.

SWORN before me at the City of)
Toronto, in the Municipality)
of Metropolitan Toronto, this)
15th day of August ,)
1986.)
)

Jonathan Lewis Freedman
JONATHAN LEWIS FREEDMAN

A Commissioner for taking Affidavits, etc.

This is Exhibit A referred to in the affidavit of Jonathan Lewis Freedma sworn before me, this 15th day of August 19 86

A COMMISSIONER, ETC.

VITA

JONATHAN FREEDMAN

Education: A.B. Harvard University, 1958
M.A. Yale University, 1960
Ph.D. Yale University, 1961

Professional Career:

1961 - Assistant Professor, Department of Psychology, Standford University
1966 - Associate Professor, Department of Psychology Stanford University
1969 - Professor, Department of Psychology Columbia University
1980 - Professor, Department of Psychology, University of Toronto

Honors and Awards

American Psychological Association Media Award, grand prize, 1975 for Crowding and Behavior.

Publications:

Books:

Freedman, J.L. and Doob, A.N. Deviancy: The Psychology of Being Different. New York: Academic Press, 1968.

Freedman, J.L., Sears, D.O., and Carlsmith, J.M. Social Psychology. Englewood Cliffs: Prentice Hall, 1970. Second Edition, 1974. Third Edition, 1978. Fourth Edition, 1981. Fifth Edition, 1985

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Freedman, J.L. Crowding and Behavior: The effects of high density on human behavior and emotions. In L. Krames, P. Pliner and T. Alloway (Eds.) Aggression, dominance and individual spacing. New York: Plenum, 1978.

Freedman, J.L. Research strategies in environmental psychology. In D. Forgays (ed.) Primary Prevention of Psychopathology, Volume II. Hanover, N.H.: University Press of New England, 1978.

Krauss, R.M., Freedman, J.L., and Whitcup, M. Field and laboratory studies of littering. Journal of Experimental Social Psychology, 1978, 14, 109-122.

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Freedman, J.L., and Perlick, D. Crowding, contagion and laughter. Journal of Experimental Social Psychology, 1979, 15, 295-303.

Freedman, J. L. Current status of work on crowding and suggestions for housing design. In Aiello, J. and Baum, J. Residential Crowding and Design. New York: Plenum, 1979.

Freedman, J. L. The human consequences of crowding: Where we stand, where we should be going. In M. R. Gurkaynak and W. A. LeCompte (Eds.) Human Consequences of Crowding. New York: Plenum, 1979.

Freedman, J. L., Birsky, J. and Cavoukian, A. Environmental factors in contagion: Density and Number. Applied and Basic Social Psychology, 1980, 1, 155-161.

Freedman, J. L. Responses of humans and other animals to variations in density. Psychological Review, 1980, 87, 327-328.

Abramovitch, A. and Freedman, J. L. Actor-observer differences in children's attributions. Merrill-Palmer Quarterly, 1981, 27, 53-59.

Freedman, J. L. Effect of television violence on aggression. Psychological Bulletin, in press.

Freedman, J. L. and Edwards, D. The effects of time pressure and type A/B behavior pattern on task performance, enjoyment and stress. Under review.

Rutman, D. and Freedman, J. Age differences in attributions of success and failure. Under review.

Grants

Time pressure, stress and individual differences. SSHRC, $66,000. July 1, 1983 to June 30, 1986.

The effect of population density on aggressiveness and growth rate of fish. NSERC - April 1, 1983 three years. $9500/year.

Advanced workstation study. DOC. One year - $22,905.

Psychosocial consequences of institutionalization and their effects on cognitive changes in the elderly. SSHRC strategic grant. $45,000. a year for three years. With G. Winocur and M. Moscovitch.

Court File No. 409/85

SUPREME COURT OF ONTARIO

(Divisional Court)

B E T W E E N :

ONTARIO FILM AND VIDEO APPRECIATION SOCIETY

Applicant/Appellant

- and -

ONTARIO FILM REVIEW BOARD

Respondent/Respondent

A F F I D A V I T

I, KAY ARMATAGE, of the City of Toronto, in the Municipality of Metropolitan Toronto, MAKE OATH AND SAY AS FOLLOWS:

1. I am a teacher at the University of Toronto in the area of Women's Studies and Cinema Studies. Attached to this my Affidavit and marked as Exhibit 'A' is a true copy of my curriculum vitae.

2. For the past five years, I have been associated with the Festival of Festivals, in Toronto, programming films for their annual September film festival. I am knowledgeable about English language film culture in Canada and the United States, and to a somewhat greater extent, foreign language film culture in other parts of the world. I am intimately familiar with the peculiar problems associated with the distribution of non-commercial artistic and intellectual films. I am knowledgeable about the

process of film criticism of popular and non-commercial films and its relationship to our political and intellectual culture generally.

3. The Festival of Festivals screens some 300 to 400 films from around the world, selected because they are "important" films as evaluated upon artistic, intellectual, political and culture criteria, and because many of them are films which are unlikely to get wide-spread commercial distribution.

4. A most important purpose of the Festival of Festivals in Toronto, as with many other film festivals around the world, is to bring to local audiences outstanding and controversial films from around the world. It is widely agreed that, were it not for the Festival, such films would generally be unavailable in Toronto.

5. It is also widely agreed that the screening of these films is a most important stimulus to the critical evaluation of the films in the world context and a stimulus to intelligent film criticism and evaluation in Canada.

6. The system of film censorship in Ontario has directly and indirectly been the cause of films not being screened at the Festival of Festivals. In some instances, either the filmmaker/producer or the film selection committee may refuse to consider films dealing with controversial sexual or sexual/political issues, because of anticipated censorship problems. In some instances,

films have been obtained for the Festival, and submitted to the Board of Censors, and run into considerable difficulties regarding censorship.

7. In my opinion, the effect of the censorship system in Ontario is to deny audiences access to, or inhibit distribution of, important films of integrity and merit which ought to be seen, appreciated and discussed by Ontario audiences. The overall impact of this is a significant diminution of the quantity and quality of our intellectual and popular culture.

SWORN before me at the City of Toronto, in the Municipality of Metropolitan Toronto, this 29 day of August, 1986.

A Commissioner, etc.

KAY ARMATAGE

CURRICULUM VITAE: ELIZABETH KAY ARMATAGE

This is Exhibit A referred to in the affidavit of Kay Armatage sworn before me, this 21 day of Aug 1986

A COMMISSIONER, ETC.

HOME ADDRESS
53 Brunswick Ave.
Toronto M5S 2L8

BUSINESS ADDRESS
Cinema Studies
Innis College
University of Toronto
Toronto M5S 1J5

CURRENT EMPLOYMENT

Teacher of Cinema and Women's Studies, University of Toronto (1972- present).

PERSONAL INFORMATION

Born Lanigan, Saskatchewan, 1943.

Canadian Citizen.

EDUCATION AND ACADEMIC DEGREES

Ph.D., University of Toronto (1974) - English.
M.A., University of Toronto (1967) - English.
Hon. B.A., Queen's University (1965) - English & Psychology.

Ontario High School Matriculation, Grade 13 (1961), Renfrew Collegiate Institute.

1984-1985

Publications

"Women Against Censorship", review article, Canadian Woman Studies, forthcoming, Summer 1985.

"Chantal Akerman: Retrospective", Ten Filmmakers For the Future (ed. Piers Handling), Frederick Ungar Publishers Ltd., forthcoming Nov. 1985.

"Feminist New Narrative: Shock Troops or Read Guard", Borderlines no. 6, forthcoming Dec. 1985.

Presentations and Papers

"Sexuality and Censorship", panelist, Forbidden Film Festival, Toronto, Oct. 1984.

"Women and the Cinema", guest lecture, Ryerson Polytechnical Institute Film Dept., Nov. 1984.

"Feminist Criticism and Women's Cinema", panelist, Through Her Eyes: Festival of Women's Films, Nov. 1984.

"Looking Through Joyce Wieland's Eyes", paper presented to the Toronto Area Women's Research Colloquium, Nov. 1984.

"Feminism and Folk Culture", keynote address, Prince Edward Island Women's Network Annual Conference, Charlottetown, May 1985.

"Film and Politics: The Intersection of Theory and Practice", invited presentation to the Political Economy Association, Learned Societies Montreal, June 1985.

"Feminist New Narrative: Shock Troops or Rear Guard", paper presented at the Conference of the Film Studies Association of Canada, University of Toronto, June 1985.

Honours and Awards

Senior Arts Award for Film Production, Canada Council, $40,000.

"Type A" Arts Award for Film Production, Ontario Arts Council, $25,000.

Bronze Hugo for Storytelling, Best Educational Film, Chicago International Film Festival, Oct. 1984.

Administrative Positions

Director, Women's Studies Programme, New College, from July 1985.

Coordinator, NEW 260Y: Introduction to Women's Studies.
Executive, Cinema Studies Programme.

University Committees

Campus and Community Affairs, Committee of the Governing Council.
Women's Studies Programme Committee.
Cinema Studies Programme Committee.
New College Council.
Innis College House Committee.
Film Studies Association of Canada.
Canadian Women's Studies Association.

Other Work

Curator, Contemporary World Cinema, Toronto Festival of Festivals.
Consultant, Through Her Eyes: Festival of Women's Films, Harbourfront, Nov. 1984.
Chairperson, Canadian Filmmakers Distribution Centre. This position, which I took on as 'community service', involved an enormous committment in 1984-1985, as we negotiated the first-ever union agreement for the employees of a government-funded arts service organization. As Chairperson, I was a principal in the negotiations, which required many hours of preparation and meetings throughout the winter.
Film Reviewer, Canada A-M, CTV National Network. Regular guest, beginning May 1985. This is for fun.

Work in Progress

Producer and Director of 60 min. documentary film about Joyce Wieland, filmmaker and artist. Production will commence Fall 1985.

Publications

"About to Speak: Patricia Gruben's Sifted Evidence", Cinema and the Poetic Image, ed. William Wees (Montreal, Cinema Canada Books, 1984); reprinted in Take Two: Canadian Film Reader, ed. Seth Feldman (Toronto: Irwin Publications, 19840.

"Sex Stereotyping in Advertising", review article, Resources for Feminist Research, Summer 1984.

"Storytelling", Opsis Journal of Avant-Garde Cinema, vol. 1 no. 1, Jun. 1984.

Presentations and Papers

"The Seven Sins of Bette Gordon's Variety", paper presented at the Conference of the Film Studies Association of Canada, York University, Jun. 1984.

Session Chairman, Colloquium on the Semiotics of Cinema, University of Toronto, Jun 1984.

"Recent Direction in Women's Cinema", presentation for the Innis College Twentieth Anniversary Celebrations and the Women's Centenary, Nov. 1984.

Honours and Awards

Storytelling Finalist, American Film Festival, New York, Jun 1984.

Other Work

Guest Programmer, Canadian Images Film Festival, Trent University, Mar. 1984.

Programmer, "Contemporary World Cinema", Toronto Festival of Festivals, Sept. 1984.

Regular Film Columnist, CBC "Stereo Morning", since April 1984.

Storytelling (16mm. film) presented at the Collective for Living Cinema, New York, Jan. 1984; Conference of the Association of Popular Culture, Apr. 1984; American Film Festival, Jun 1984; other festivals.

Work in Progress

Producer, editor, collaborator with Joyce Wieland on four new films: Birds at Sunrise, Wendy and Joyce, Peggy's Blue Skylight, and Patriotism.

Committees, University and Community Activities

Women's Studies Programme Committee.

Cinema Studies Programme Committee.

1984 cont.

New College Council.
New College Academic Affairs Committee.
Innis College House Committee.
Film Studies Association of Canada.
Canadian Women's Studies Association.
Co-Ordinator, NEW 260Y, Introduction to Women's Studies.
Chairman, Board of Directors, Canadian Filmmakers' Distribution Centre.
Co-Ordinator, Returning Students Workshop, New College, Oct. 1984.

1983

Publications

"Appelbert and the NFB", Canadian Forum, Feb. 1983.

"Annette Kuhn's Women's Pictures", review article, Resources for Feminist Research, Summer 1983.

Honours and Awards

Canada Council Senior Filmmaker's Grant.

Presentations and Papers

"Women and the Avant-Garde Cinema", paper presented at the Conference of the Ontario Association of Art Galleries, Toronto, Mar. 1983.

Panelist, Women's Cultural Building and Canadian Images Seminar on Women's Cinema, Toronto, Apr. 1983.

"Patricia Gruben's Sifted Evidence and Female Discourse", paper presented at the Conference of the Film Studies Association of Canada, Concordia University, Jun. 1983.

Discussant and guest filmmaker, International Conference on New Narrative Cinema and the Future of Film Theory, Simon Fraser University, Sept. 1983.

"A Woman's Voice in Films", presentation to the Cinema and Photography Dept., Concordia University, Nov. 1983.

Other Work

Guest Programmer, "Beryl Fox Retrospective", Canadian Images Film Festival, Trent University, Mar. 1983.

Programmer, "Contemporary World Cinema", Toronto Festival of Festivals, Sept. 1983.

Storytelling (narrative/performance/analysis film, 16mm., 55 min.) premiered at Toronto Festival of Festivals, workshopped at International Conference on New Narrative Cinema and the Future of Film Theory, Sept. 1983; winner Bronze Hugo Award, Chicago International Film Festival, Oct. 1983; other festivals.

Committees, University and Community Activities

Women's Studies Programme Committee.

Cinema Studies Programme Committee.

New College Council.

Innis College House Committee.
Film Studies Association of Canada.
Canadian Women's Studies Association.
Co-ordinator, New 260Y, Introduction to Women's Studies.
Vice-Chairman, Board of Directors, Canadian Filmmakers' Distribution Centre.
Programming Committee, Canadian Images Film Festival, Trent University.

Publications

"Canadian Women's Cinema", Canadian Forum Special Issue on Canadian Culture, vol. LXI, no. 715, Feb. 1982, 24-25.

"Life On This Planet", Spirale, vol. 1, no. 3, Winter 1981-82, 17-18.

"Winter of Discontent", Canadian Forum, vol. LXII, no. 718, May 1982, 38-40.

"Independent Cinema 1982", Canadian Forum, vol. LXII, no. 721, Sept. 1982, 39-40.

"The Status of Women in Canadian Cinema", forthcoming Women's Studies Journal.

"The Impact of Feminism on Aesthetic Theory", forthcoming Fireweed.

Honours & Awards

Bed and Sofa (drama, 12 min., 16mm., 1979) shown at National Film Theatre, London, May 1982.

Speak Body (a film about abortion, 8 min., 16mm., 1979) chosen as one of three films by Canadian women to tour Britain, May 1982; shown at National Film Theatre, London, May 1982; finalist in Tyneside Film Festival, Britain, July 1982.

Striptease (documentary, 24 min., 16mm., 1980) opened season of films by New Canadian Directors, Harbourfront, Toronto Mar. 1982; exhibited in Rome Women's Film & Video Festival, Jun. 1982; shown in several other Canadian Festivals.

Presentations & Papers

"The Camera Eye, Point of View & The Fourth Look", paper presented at Innis College Lecture Series, Jan. 1982.

Organizer & moderator, panel on Feminist Film Theory: Aesthetics and Politics, Canadian Images Festival, Trent University, Mar. 1982.

Panelist, Women's Cultural Building seminar on Judy Chicago's The Dinner Party, Jun. 1982.

Special consultation/seminar presented to the Department of Communications, Federal Government, on the Status of Women in

Canadian Cinema, Oct. 1982.

Guest/participant in final roundtable discussion, Le Semaine des Femmes, Hull, Oct. 1982.

Respondent to presentation on Images of Women, York/U of T Women's Research Colloquium, Toronto, Oct. 1982.

Guest Speaker, "Striptease", presented by Sexual Education Centre, U of T, Nov. 1982.

Moderator, final Open Forum in Norman Jewison week, presented by Victoria College & Cinema Studies Programme, U of T, Nov. 1982.

Other Work

Guest Programmer,, special event at Canadian Images Festival, Trent University, Mar. 1982 - "A New Look: Women & Film 1982".

Programmer, Festival of Festivals (Toronto), Sept. 1982 - "New Directors, New Directions".

Work In Progress

"Life On This Planet", a film about pregnancy, 16mm., 20 min. - nearing completion.

"Once Upon A Time", a film about storytelling as a traditional art form and its relation to cinematic narrative, 16mm., 60 min. - in preparation.

Committees & University Activity

UTFA Council.

Women's Studies Programme Committee.

Cinema Studies Programme Committee.

Innis College Council.

Innis College Academic Affairs Committee.

Innis College House Committee.

Film Studies Association of Canada.

Co-ordinator, NEW 260Y, Introduction to Women's Studies.

1981

Publications

"Material Cinema", Canadian Forum, vol. LX, no. 705, Dec.-Jan. 1980-81.

"Our Hitler", Canadian Forum, vol. LX, no. 708, Apr. 1981.

"Feminist Film Theory", Canadian Forum, vol LX, no. 712, Nov. 1981.

"Striptease: Work, Performance, Sexuality", Canadian Women's Studies, vol. 3 no. 2, 1981.

Honours & Awards

Complete Retrospective of my films at Pacific Film Archives, Berkeley, California, Nov. 1981 - billed as "one of Canada's most important filmmakers and feminist film theoreticians".

Striptease was finalist in the American Film Festival, New York, June 1981, and Yorkton Film Festival, Nov. 1981.

Awarded Senior Filmmaker's Grant, Ontario Arts Council.

Other Work

Daughter Alexis born 26 June, 1981.

Began work on film "Life on This Planet", Jun. 1981.

Special consultatn to Status of Women Canada (Federal Gov't.) on Women in Film (Sept.-Dec. 1981).

Guest on "Mad Shadows" (TV Ontario) on Women & Film, Nov. 1981.

Chaired session on Feminist Criticism at U of T Women's Studies Conference: Women, Power & Consciousness, Oct. 1981.

"Women's Cinema in Canada", paper presented to Teachers' Association, Toronto, Sept. 1981.

Committees and University Activity

UTFA Council, 1981- present.

Women's Studies Programme Committee, 1974-present.

Cinema Studies Programme Committee, 1975-present.

Innis College Council, 1975-1981.

Film Studies Association of Canada, 1976-present.

1980

Publications

"Look at Richard Gere: Sexual Objectification in Cinema", Canadian Forum. vol. LX no. 700 (Jun./Jul. 1980).

"Women's Films and 'Women's Films'", Canadian Forum, vol. LIX no. 695 (Dec./Jan. 1979-80).

"Interview: Kay Armatage talks with Lorraine Segato", Fireweed #7 (Summer 1980), pp.71-76.

Papers

"Feminist Film Theory: An Historical Appraisal", presented at York/U of T Women's Research Colloquium, Nov. 1980.

"The Future of Women in Cinema", presented at the International Futures Conference, Toronto Jul. 1980.

"A History of Striptease", presented in the Innis College Faculty Lecture Series, Jan. 1980.

Guest Speaker, Women and Film Panel, sponsored by Goethe Institute, Pauline McGibbon Cultural Centre, Toronto Feb. 1980.

Moderator, Women at the NFB Panel, special series of seminars/screenings on the National Film Board, organized by Prof. B.Z. Shek, U of T.

Other Work

STRIPTEASE, documentary film (24 min., 16mm., col.) completed August 1980 & premiered at Toronto Festival of Festivals, Sept. 1980.

Honours and Awards

STRIPTEASE won Silver Plaque for Social and Political Documentary, Chicago International Film Festival, Oct. 1980.

STRIPTEASE accepted for screening - entry by competition - at Filmex, Los Angeles International Film Festival.

Senior Filmmakers' Grant, Ontario Arts Council.

Summary of Relevant Work 1972-1979

Publications

"Feminist Film-making: Theory and Practice", Canadian Women's Studies Journal, vol. 1 no. 3 (Spring 1979), pp.49-50.

"Canadian Political Cinema", Canadian Forum, vol. LVIX no. 690 (Jun/Jul. 1979), pp.48-49.

"Women in Film", Take One, vol. 6 no. 4 (Mar. 1978), p.43.

"Feminist Film Theory", Take One, vol.6 no.8 (Jul. 1978), pp.36-38.

"Leni Riefenstahl", Take One, Spring 1977.

"Joyce Weiland", Women and the Cinema: A Critical Anthology, ed. Karyn Kay & Gerald Peary, New York: E.P. Dutton (1977), pp.246-261.

Women & Film Programme Notes, Women & Film International Festival (1973), Writer and Co-Editor.

Women in Film Special Issue, Take One, vol. 3 no. 2 (Feb. 1972), 48 pp., Co-Editor.

Contributing Editor, Take One Magazine, 1973-1976.

Other Work

SPEAK BODY, 8 min., 16mm. avant-garde film (1979) - Producer, Director, Writer, & Editor.

BED AND SOFA, 12 min., 16mm. drama (1979) - Producer, Director, Writer, & Editor.

GERTRUDE & ALICE IN PASSING, 8 min., 16mm. experimental drama (1978) - Producer, Director, Writer & Editor.

MEATBALLS, feature length, 35 mm. film (1978) - Locations Coordinator.

JILL JOHNSTON, 30 min., 16mm. documentary film (1977) - Co-Producer & Co-Director.

Women & Film, International Festival of Women's Films (1973) - Co-Editor of Programme Notes & one of ten Principal Organizers.

Honours and Awards

Ontario Arts Council Filmmakers' Grants (1975-1981).

Guest Filmmaker/Participant in Grierson Seminar, sponsored by Ontario Film Association (1977).

All my films shown in Edinburgh International Film Festival and Toronto Festival of Festivals (1977-1981), as well as others.

ONTARIO FILM AND VIDEO
APPI IATION SOCIETY

Applicant

and

ONTARIO FILM REVIEW BOARD

Respondent

(Short title of proceeding)

Court file no.

(Divisional Court)
SUPREME COURT OF ONTARIO
(Supreme or District)
Proceeding commenced at Toronto

A F F I D A V I T

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CHARLES CAMPBELL
Solicitor for the Applicant

Court File No. 409/85

SUPREME COURT OF ONTARIO

(Divisional Court)

B E T W E E N :

ONTARIO FILM AND VIDEO APPRECIATION SOCIETY

Applicant

- and -

ONTARIO FILM REVIEW BOARD

Respondent

A F F I D A V I T

I, Robin Wood, of the City of Toronto, in the Municipality of Metropolitan Toronto, MAKE OATH AND SAY AS FOLLOWS:

1. I am a Professor of Film Study at York University, where I teach a wide variety of courses and co-ordinate the Film Study programme of Atkinson College. Attached to this my Affidavit and marked as Exhibit "A" is a true copy of my curriculum vitae.

2. The study of film in university covers both film as an art form and the more sociological aspects of the medium: film as a product of our culture. It includes the entire range of cinematic product from established classics and works of high artistic status to all the forms of popular cinema. The courses

I have taught over the past few years include the Hollywood Cinema, Genre Study, Japanese Cinema, Film and Social Change and Images and Women, a feminist-based course.

3. Censorship adversely affects my work at all levels, despite the fact that screenings of banned films are permitted for educational purposes. If a film has been banned, it is unlikely that copies will be available from Canadian distributors. It is not in the commercial interests of distributors to stock films that can only be rented out to small student groups at very low rental fees. If a film has been cut, it is virtually impossible to get hold of a complete print even for educational purposes.

4. A few specific examples will illustrate how censorship has interfered with the serious study of film on courses of all the types described above:

A. Oshima is generally regarded as the most important Japanese film-maker of the post-Kurosawa generation and Ai No Corrida (In the Realm of the Senses) is generally regarded as his supreme achievement. It is banned in Ontario and no print was available for my course on Japanese Cinema, in which Oshima was one of the four directors we were supposed to be studying in detail and depth.

B. Important European films - key works by major artists - have been subjected to harmful cutting (The Tin Drum and Luna are obvious examples). This means that my students cannot see these films as their creators intended. The treatment of sexuality is crucial to the work of directors such as Schlondorff and Bertolucci, and it becomes difficult to discuss this treatment responsibly when climactic moments are missing from the films.

C. The second half of the Genre Study course is devoted to the study of a single genre. When I taught the course, I chose the horror film, partly for its richness, partly for its great cultural significance: it is a genre to which I have myself devoted a special study, published in a book called The American Nightmare. One of the most important works in the genre during the past ten years is undoubtedly Romero's Dawn of the Dead, for its cinematic brilliance, its exceptional intelligence and because it pushes ahead the frontiers of the genre thematically. It was so savagely mutilated by our censor board that I felt quite unable to screen the resulting mess for my students: the cutting makes the film appear downright incompetent and is an insult to one of the most

intelligent and progressive living American film-makers. The same thing has just happened to Day of the Dead, arguably an even finer film, one of the most incisive and intelligent responses to contemporary America to be found anywhere within commercial cinema.

D. Film and Social Change is a course that deals with the relationship between film and the major concerns of and controversies within our culture; Images and Women offers a feminist approach to all forms of cinema. In both courses, the issue of pornography invariably arises, with questions concerning, for example, distinctions between the pornographic and the erotic. One obviously cannot responsibly discuss pornography without showing examples of it and it is important that all types of pornography (soft-core, hard-core, heterosexual or gay) be available for study and comparison. The banning of all hard-core pornography in Ontario presents extreme problems with courses of this kind.

5. Our censor board, furthermore, refuses to make any significant distinctions between pornography and eroticism. It cut a famous love scene between Jon Voight and Jane Fonda in

Coming Home, widely acclaimed by critics as one of the most tender erotic scenes ever filmed and, as far as I know, not cut anywhere else in the world.

6. A serious study of pornography attempts to probe beyond its generally ugly surface to understand the social disease of which it is a mere symptom. The question of why heterosexual males in our culture wish to objectify, exploit, degrade and brutalize women is not answered by banning pornography; on the contrary, the banning of pornography is a means of evading the question, pretending the problem does not exist. The answer to pornography lies not in censorship but in education through courses in media studies and in gender relations, for example.

7. I make this Affidavit in support of the Application of Ontario Film and Video Appreciation Society and for no improper purpose.

SWORN before me at the City of)
of Toronto, in the Municipality)
of Metropolitan Toronto, this 2)
day of Sept , 1986.)
)

Robin Wood

ROBIN WOOD

A Commissioner for taking Affidavits, etc.

This is Exhibit A referred to in the affidavit of Robin Wood sworn before me, this 2 day of ~~August~~ Sept 1986

A COMMISSIONER, ETC.

YORK UNIVERSTIY
GRADUATE PROGRAMME IN FILM AND VIDEO
CURRICULUM VITA: R. WOOD

I) NAME: ROBIN WOOD
RANK: Professor
STATUS: Tenured

II) DEGREES

1953 Cambridge. B.A., English.
1954 Cambridge. Diploma of Education.

III) EMPLOYMENT HISTORY

1954-1957 School-teaching in England

1957-1960 Swedish-British centre in Stockholm, Sweden, teaching English to Adult education classes.

1958-1959 Universite de Lille, France, teaching English translation.

1960-1963 Darlington Hall School, Totnes, Devon. French and English.

1963-1969 Sir Frederick Osborn School, Welwyn Garden City, Herts. English up to University Entrance level.

1966 Guest Lecturer, British Film Institute Summer School, Sterling.

Spring 1967 Lecture Tour of Swedish universities.

1967-1969 Film Studies Lecturer, University of London: British Film Institute Extra-Mural Film Course.

1968 Guest Lecturer, British Film Institute Summer School, Sterling.

1969-1972 Lecturer in Film Studies, Dept. of Film Studies, Queen's University, Kingston. Also taught a course on the Romantic poets for the English Dept. at Queen's.

(III. cont'd)

Summer, 1972	Lecturer, Dept. of Film Studies, York University.
1972-1973	Visiting Lecturer in Film, Berkshire College of Education, Reading, England.
1972-1974	Lecturer, Extra-Mural Film Course, University of London.
Sept. 1973	Visiting Lecturer, University of Nottingham.
1973-1977	Lecturer in Film Studies, University of Warwick.
1977 to Present	Professor, Dept. of Film, Faculty of Fine Arts, and at Dept. of Fine Arts, Atkinson College, York University.
1977-1980	Chairman, Dept. of Fine Arts, Atkinson College.
1980	Visiting Professor for two weeks in February and April at Iowa University.
1980-1981	Visiting Professor in Film Studies (part-time, 1-year appointment), Queen's University.

IV) AWARDS

None to date.

V) SCHOLARLY AND PROFESSIONAL ACTIVITIES (1979-85)

1979	Festival of Festivals, Toronto. In collaboration with Richard Lippe, organized "The American Nightmare", a retrospective of the horror film. This involved 60 screenings, critical seminars, and on-stage interview-seminars with Brian de Palma, David Cronenberg, Stephanie Rothman, Wes Craven, and George Romero.
1978-80	Regular classical record reviewer for Fugue Magazine.
1979-80:	Active in campaign against Ontario film censorship, including the organization of a public meeting in the Festival Theatre (November), televised by Rogers Cable, and subsequent panel meetings at OCA and University of Toronto.

(V. cont'd)

1979-81	Regular film critic for The Clarion.
1980 to Present	Regular film columnist for Canadian Forum.

VI) THESIS SUPERVISIONS

Career Total:	8	(all Masters)
Completed:	4	3 M.A.'s in Interdisciplinary Studies, York University, 1978-84
		1 M.F.A. in Film, York University, 1984
In Progress:	4	1 M.A. in Interdisciplinary Studies, York University
		3 M.F.A.'s in Film, York University
Inactive:		None.

VII) GRADUATE COURSES TAUGHT IN THE LAST FIVE YEARS

1983-84	Film studies seminar entitled, "The Structure of Film" ; Graduate Programme in Film and Video, York University.

VIII) RESEARCH FUNDING, 1979-PRESENT

1981-82	Canada Council Grant ($3000.00) for writing a book on narrative film and sexual politics.

IX) PUBLICATIONS.

Summary of Work Prior to 1974:

In 1959 I began writing articles on the cinema, the outcome of a life-long interest. This continued through the 1960's and early 70's, when articles by myself were published in such journals as Cahiers du Cinema (Paris), Definition, the Oxford Opinion, Motion, Movie, the New Left Review, Focus (Chicago), Screen, On Film (New York),

(IX. cont'd)

Positif, and The Village Voice (New York). Between 1970 and 1978, my most extended and ambitious work appeared regularly in the New York magazine Film Comment. Various articles were also published in translation in Finland, and in Chaplin, the Swedish film journal.

In the 1960's, I also began writing books on the works of specific directors. These included:

Hitchcock's Films (Zwemmer, London. Barnes, New York. 1965. 2nd Edition - 1969. 3rd Edition, with new material, A.S. Barnes, new York. 1978.);

Howard Hawks (Secker and Warburg, London. Doubleday, New York. 1966. 2nd Edition, with a new essay, published by the British Film Institute, 1982.);

Arthur Penn (Studio Vista, London. Praeger, New York. 1969.);

Ingmar Bergman (Studio Vista, London. Praeger, New York. 1969.);

Claude Chabrol (Written in collaboration with Michael Walker. Studio Vista, London. Praeger, New York. 1970.);

Antonioni (Written in collaboration with Ian Cameron. Studio Vista, London. Praeger, New York. 1970.);

Apu Trilogy of Satyajit Ray (Studio Vista, London. Praeger, New York. 1970.);

In addition to the above, I contributed substantial sections to two Studio Vista compilation books:

Articles on BANDE A PART, ALPHAVILLE and WEEKEND, in The Films of Jean-Luc Godard. Studio Vista, London. 1967. Praeger, New York. 1969.

"The films of Dusan Makavejev" in The Second Wave. Studio Vista, London. Praeger, New York, 1970.

Sections of several of my books (e.g. Hitchcock, Hawks and Bergman chapters) have since been reprinted in critical anthologies in the United States, and the books themselves have been translated into various languages including French, German, Spanish, and Persian.

(IX. cont'd)

Since 1974 I have continued doing extensive publication work, writing books, critical articles, and papers, as well as giving guest lectures and interviews. This work is listed below.

Books:

Personal Views: Explorations in Film. London: Gordon Fraser Gallery, 1976. A collection of critical and theoretical essays on the cinema.

Hitchcock's Films. 3rd Edition, with new material. New York: A.S. Barnes, 1978.

The American Nightmare: Essays on the Horror Film. Published by the Festival of Festivals in conjunction with the Canadian Film Institute. Co-edited with Richard Lippe, with contributed essays by myself, Richard Lippe, Andrew Britton, and Tony Williams. September, 1979.

Howard Hawks. 2nd Edition, with a new essay, published by the British Film Institute, 1982.

Chapters in Books:

"David Cronenberg: A Dissenting View", in the anthology on Cronenberg, The Shape of Rage, August 1983.

"Quo Vadis?: The Strange Career of Bruce Beresford". For an anthology on Beresford published in Australia, Autumn, 1983.

Articles:

In FILM COMMENT:

"Carl Dreyer" - Vol 10, No. 2, 1974, pp. 10-17.

"Rossellini's Films with Ingrid Bergman" (and an interview with Ingrid Bergman), Vol 10, No. 4, 1974, pp. 6-15.

"Von Sternberg's Empress" - Vol 11, No. 2, 1975, pp. 6-12.

"Art and Ideology: SILK STOCKINGS" - Vol 11, No. 3, 1975, pp. 28-31.

"In Defence of Art" (Extracts from a series of essays to appear in forthcoming book) - Vol 11, No. 4. 1975.

"Against Conclusions" (On the conflicting positions of F.R. Leavis and Jean-Luc Godard) - Vol. 11, No. 5, pp. 30-32.

"New Films at Edinburgh" - Vol. 11, No. 6, 1975, pp. 25-29.

"Democracy and Spontaneity: ONCE UPON A HONEYMOON" - January, 1976.

"Film Acting" - Vol. 12, No. 2, 1976, pp. 20-25.

"F.W. Murnau: NOSFERATU AND SUNRISE" - Vol. 12, No. 3, 1976, pp. 4-19.

"Ideology, Genre, Auteur" (On ITS A WONDERFUL LIFE and SHADOW OF A DOUBT), Vol. 13, No. 1, 1977, pp.46-51.

"Realism and Revolution" (On LA CECILIA and NUMERO DEUX) - Vol. 13, No. 3, 1977, pp. 17-23.

"Responsibilites of a Gay Film Critic" - Vol. 14, No. 1, 1978, pp. 12-17.

"Venus de Marlene" (on BLONDE VENUS) - Vol. 14, No. 1, 1978, pp. 58-63.

"Return of the Repressed" (on the American horror film), Vol. 14, No. 4, 1978, pp. 24-32.

"Gods and Monsters: The Films of Larry Cohen" - Vol 14, No. 5, 1978, pp. 19-25.

In other journals:

"Welles, Shakespeare et Webster: LA SOIF DU MAL", Positif, No. 167, 1975, pp. 45-55.

"Smart-Ass and Cutie-Pies: Notes toward an Evaluation of Altman", Movie, No. 21, 1975, pp. 1-17.

(IX. cont'd)

"Bernardo Bertolucci: Before 1900", Movie, No. 23, 1976, pp. 1-8.

"RACE WITH THE DEVIL", Movie, No. 23, 1976, pp. 23-26.

"DOGDAY AFTERNOON", Movie, No. 23, 1976, pp. 33-36.

"The American Family Comedy from MEET ME IN ST. LOUIS to THE TEXAS CHAINSAW MASSACRE", Wide Angle, Vol. 3, No. 2, 1979, pp 5-11.

"The Incoherent Text: Narrative in the 70's", Movie, 27/28, pp.24-42.

"Narrative Pleasure: Two films of Jacques Rivette", Film Quarterly, Fall 1981, pp. 2-12.

"Burying the Undead: The Use and Obsolescence of Count Dracula", Mosaic, XVI/1-2, 1983, pp. 176-187.

"Watching in the Dark: Hidden meanings in Hollywood Movies", Blueboy, Sept. '83, pp. 43 and 71-75.

"Returning the Look: Reflections on the 80's Horror Film", American Film, Sept. '83. (Retitled w/o permission: "Beauty Bests the Beast".)

"Male Anxiety, Male Desire: The Essential Hitchcock", American Film, Nov. '83. (Retitled under protest, "Fear of Spying".)

"Raging Bull: The Homosexual Subtext", Movie, 31/32, Spring '85.

"Heaven's Gate", Movie, 31/32, Spring '85.

Papers Presented at Conferences:

Paper on "Sexual Ideology and Film", Conference on "Gays and Film", Kingston, Ont., November 1978.

(IX. cont'd)

Paper on "Developing a Film Culture", Canadian Images Conference, Trent University, March 1980.

Paper on "HEAVENS GATE", conference on American Film Since 1970, Ohio University, Columbus, Ohio, January 1982.

Paper on "Narrative and Sexuality, with Special Reference to RAGING BULL", Film Studies Conference, Latrobe University, Melbourne, Australia, December 1982. (Paper published in conference collection.)

Paper on "RAGING BULL", Gay and Lesbian Media Conference, UCLA, January, 1983.

Columns, Reviews, other Short Pieces:

1973-78 — Wrote frequently for the Times Educational Supplement on a broad range of films and film directors, and reviewed books on Shakespeare, Blake, Lawrence, Brecht, and Otto Klemperer.

1979-81 — Regular film critic for The Clarion; articles and reviews of 800-1000 words.

1978-80 — Regular contributor to Fugue Magazine, classical record reviews.

1980-83 — Regular contributor to Canadian Forum; film three times a year, articles of about 1000 words.

1983 to Present — Monthly film columnist for Canadian Forum, articles of approximately 1000 words.

Radio and Television Broadcasts:

August, 1977 — "The Crisis in Film Criticism". 22-minute talk for the BBC; re-broadcast a month later.

Nov. 1978 — Two television programmes on Howard Hawks for Elwy Yost's "Saturday Night at the Movies", TV-ONTARIO. First broadcast Nov. 18 and 25; repeated subsequently.

(IX. cont'd)

Works in Progress:

Hollywood from Vietnam to Reagan, (book; approx. 350 pages), to be published by Columbia University Press, September 1985.*

Wood on Hitchcock (provisional title). A reprint of Hitchcock's Films, with eight new essays. Accepted by Columbia University Press.

Sexual Politics and Narrative Film, (book).

The last two projects have also been submitted to Columbia University Press.

* Published December 1985.

ONTARIO FILM AND VIDEO APPRECIATION SOCIETY

Applicant

and

ONTARIO FILM REVIEW BOARD

Respondent

(Short title of proceeding)

Court file no.

(Divisional Court)
SUPREME COURT OF ONTARIO
(Supreme or District)

Proceeding commenced at Toronto

A F F I D A V I T

DYE & DURHAM CO. LIMITED—Form No. 909

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CHARLES CAMPBELL
Solicitor for the Applicant

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SUPREME COURT

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IN THE MATTER OF The 3 Sept 86 8,
as amended S.O. 1984,

AND IN THE MATTER OF T. Draft.
R.S.O. 1980, c.224;

AND IN THE MATTER OF The

AND IN THE MATTER OF The C
R.S.O. 1980, c.86;

AND IN THE MATTER OF a certai che Ontario
Film Review Board appointed un res Act;

B E T W E E N:

ONTARIO FILM AND VIDEO APPRECIATION SOCIETY

Applicant

-and-

ONTARIO FILM REVIEW BOARD

Respondent

APPLICANT'S FACTUM

Part I - The Parties and the Decision to be reviewed

1. The Applicant/Appellant (referred to hereafter as OFAVAS) is a no share capital corporation incorporated under the laws of the Province of Ontario for the purpose of stimulating interest in film and video arts.

2. The Applicant/Appellant has a licence (No. 308) issued by the Theatres Branch, Ontario, to distribute 16 millimeter films in Ontario.

3. The Ontario Film Review Board is established pursuant to The Theatres Act, R.S.O. 1980, c. 498, as amended by The Theatres Act Amendment Act, S.O. 1984, c.56 (all further references to this Act will be to the amended version).

4. On February 18, 1985, the Ontario Film Review Board refused to approve for exhibition or distribution the 16 millimeter film Amerika unless certain cuts were made. On March 28, 1985, the same Board, with different members sitting, upheld the original decision. The Appellant appeals that decision pursuant to amended The Theatres Act, s. 35(8). The Applicant further seeks judicial review of the Board's power to make such decisions.

PART II - The Facts

5. On February 14, 1985, the Applicant/Appellant delivered the film Amerika, along with two other films, to the Ontario Film Review Board for approval to exhibit and distribute throughout Ontario.

Affidavit of David Poole, paragraph 3, Exhibit "A"

6. On February 18, 1985, the Ontario Film Review Board refused to approve the film for exhibition or distribution unless certain eliminations were made.

Affidavit of David Poole, paragraph 5, Exhibit "D"

7. On March 20, 1985, OFAVAS appealed that decision pursuant to section 35(5) of The Theatres Act, R.S.O. 1980, c. 498.

Affidavit of David Poole, paragraph 6, Exhibit "E"

8. On March 28, 1985 the Ontario Film Review Board denied that appeal.

Affidavit of David Poole, paragraph 7, Exhibit "F"

PART III - The Issues and the Law

First Issue Division of Powers

9. The Theatres Act regulates the content of all film and video that may be viewed in the Province of Ontario in a public "exhibition", or "distributed" in this Province. The Act, as amended, regulates possession of film and video even for personal use unless such film or video is, or has been, neither distributed nor exhibited.

The Theatres Act, R.S.O. 1980, c. 498, as amended S.O. 1984, c. 56, s. 1 (ba), 35 (1)

10. No film or video may be exhibited or distributed unless its contents have been approved, in advance, by the Ontario Film Review Board, with reference to criteria set out in the Regulations. The Theatres Act provides for penalties for offences against the Act including fines of up to $25,000.00 and jail terms of up to one year. The legislation constitutes a system of censorship by prior restraint, enforced by penal sanctions.

The Theatres Act, amended, s. 35 (1), (2); s. 61

11. It is respectfully submitted that, given the nature of the criteria of censorship set out in the Regulations, the purpose of the legislation under review is the control of public morality. Those criteria bear no relation to the regulation of local trade and commerce. Furthermore, the severe sanctions imposed for violation of the Act are strong indicators of the criminal law purpose of the Act. It must be concluded that the censorship provisions are, in pith and substance, the regulation of morality, which is the exclusive domain of the criminal law and, hence, ultra vires the province.

> Rio Hotel Limited v. Liquor Licencing Board (1983), 47 N.B.R. (2d) 436
>
> Re Sherwood Park Restaurant Inc. et al. and Town of Markham et al.; Re Wendy and Town of Markham (1984), 48 O.R. (2d) 449
>
> Nordee Investments Limited v. The Corporation of the City of Burlington (1984), 48 O.R. (2d) 123
>
> Re Koumoudouros and Metropolitan Toronto (1986), 52 O.R. (2d) 442 (C.A.)
>
> R. v. Big M Drug Mart Ltd. (1985), 18 C.C.C. (3d) 385 (S.C.C.)

12. It is respectfully submitted that the case of McNeil v. Nova Scotia Board of Censors, [1978] 2 S.C.R. 662, is distinguishable from the instant case. In McNeil, the Court held that certain provisions of Nova Scotia Theatres and Amusements Act, which allowed censorship of films but contained no criteria indicating the purpose of such censorship, were a valid exercise of

provincial power to regulate local business. The Ontario legislation at issue differs from the Nova Scotia legislation in that it contains detailed criteria in Regulation 56/85 which clearly shows that the purpose of the Act is to regulate public morality. It must also be noted that the "offence" section of the Nova Scotia legislation provided only for a token fine of between $20.00 and $100.00 and no jail term, whereasthe Ontario legislation provides for a fine of up to $25,000.00 and jail terms of up to one year.

McNeil v. Nova Scotia Board of Censors, [1978] 2 S.C.R. 662

13. In R. v. Westendorp, the Supreme Court struck down a portion of municipal bylaw enacted to control streets, characterizing it as a colourable attempt to control prostitution and hence an invasion of criminal law power. Insertion of the impugned provision into an otherwise valid bylaw concerned with garbage, parades, excavation and obstructions on streets did not save it. The Court observed that the same deed -- soliciting by prostitutes -- triggered penalties under both the bylaw and the Criminal Code. Similarly, it is submitted that the fact that The Theatres Act contains many provisions governing matters concerned with the regulations of a local business, such a standard for projectionists, for storage of film or for buildings in which films are shown, does not save the impugned censorship provisions of the Act. The same deeds -- the exhibition of films

alleged to be morally objectionable -- triggers offences under both the provincial Act and the Criminal Code.

Criminal Code of Canada, R.S.C. 1970, c. 34, s. 159

R. v. Westendorp (1983), 2 C.C.C. (3d) 330

Second Issue Paramountcy

14. It is respectfully submitted that The Theatres Act, R.S.O. 1980, c. 498 and the Regulations thereunder would conflict with the Criminal Code even if they were valid provincial legislation. In that case, the doctrine of paramountcy requires that they be declared inoperative and superseded by the federal legislation.

Nordee Investments Limited v. The Corporation of the City of Burlington (1984), 48 O.R. (2d) 123.

15. The most widely accepted enunciation of the paramountcy doctrine provides that provincial legislation will be declared inoperable where it come into operational conflict with valid federal legislation. Both the Criminal Code and Ontario's Theatres Act contain standards with respect to the moral content of films for the protection of the public, but the standards in each Act are very different and the opportunities for operational conflict in the application of each Act are manifold.

Multiple Access Ltd. v. McCutcheon (1982), 138 D.L.R. (3d) 1

Nordee Investments Limited v. The Corporation of the City of Burlington, supra.

16. The Criminal Code provides for prosecution with respect to the distribution or exhibition of films which are obscene and states that a film is obscene if its "dominant characteristic" is "the undue exploitation of sex, or of sex and ... crime, horror, cruelty and violence". The Theatres Act and regulations provide for censorship (and prosecution of those who do not comply with an order of censorship) of films which contain a variety of characteristics, including "the explicit depiction of a sexual act". Thus, a citizen might comply with provincial censorship legislation and be in violation of the Criminal Code or vice versa.

> Criminal Code of Canada, R.S.C. 1970, c.C-34 as amended, s. 159 (1), (2), (8);
>
> The Theatres Act s. 3, 35, 40, 63 (1) (31);
> O. Reg. 56/85

17. In considering conflict between the two legislative schemes, it is relevant to note that defences available under the Criminal Code are not provided for in The Theatres Act. Under the Criminal Code, an accused may be acquitted if the films in question did not highlight the "undue exploitation of sex" or if the accused can be shown that his act served the public good; these defences are not available under provincial legislation. In the case at bar, the Board ordered elimination of scenes of fellatio and rear penetration. In the case of R. v. Doug Rankine Company Ltd. and Act III Video Productions Ltd. (1983), 36

C.R. (3d) 154, Borins, C.C.J., stated in finding certain films were not obscene, that "contemporary community standards would tolerate scenes of fellatio and anal sex".

R. v. Doug Rankine Company Ltd. and Act III Video Productions Ltd. (1983), 36 C.R. (3d) 154

Nordee Investments Limited v. The Corporation of the City of Burlington (1984), 48 O.R. (2d) 123.

Criminal Code of Canada, s. 159 (4), (8)

Third Issue Duplication Excessive under Charter

18. It is respectfully submitted that sections 3, 35, and 40 of The Theatres Act, R.S.O. 1980, c. 498 violate the Charter of Rights and Freedoms. Both provincial censorship legislation and federal obscenity legislation curtail "free expression" as guaranteed by section 2(b) of the Charter of Rights and Freedoms in pursuit of essentially the same purpose. It is not a "reasonable limit .... demonstrably justified" to subject free expression to two different legislative schemes with different criteria, established by two different levels of government for virtually identical purposes, both enforced by penal sanctions in two different proceedings. This duplication of regulation and punishment has an unwarranted "chilling effect" which constitutes an unjustifiable burden on "freedom of expression". In such circumstances principles of federalism dictate that the

law which should be recognized is the federal legislation, and the provincial laws should be declared of "no force or effect".

Fourth Issue Vagueness and Overbreadth

19. It is respectfully submitted that Ontario Regulation 56/85 is of no force or effect because it infringes "freedom of expression" and cannot be justified as a "reasonable limit".

20. Regulation 56/85 has the effect of banning any "explicit depiction of sexual activity" without qualification or reference to redeeming social values. It is respectfully submitted that sexual activity is normal human behaviour, and, as such, is a topic about which individuals must be able to speak, write, and express themselves freely. Any limit on expression could only prohibit the undue exploitation of sex (i.e. appealing to purient interest in violation of the minimal community standards of decency and without redeeming social value), if it is to be justified.

Re Invormation Retailers Association of Metropolitan Toronto and Municipality of Metropolitan Toronto (1985), 52 O.R. (2d) 449 (O.C.A.)

Towne Cinema Theatres Ltd. v. R., [1985] 1 S.C.R. 494

21. Section 21(2)(e) of Regulation 56/85 is overbroad in its scope, for it catches all "explicit depiction of sexual activity" within its sweep. It lacks the "proportionality" that must be present in a demonstrably justifiable law, because it responds in an excessive manner and is not limited to the valid government interest in preventing certain mischief. As the limit provided in the Regulation is not reasonable, it must be held to be of "no force or effect".

R. v. Big M Drug Mart Ltd. (1985), 18 C.C.C. (3d) 385 (S.C.C.)

R. v. Videoflicks (1984), 48 O.R. (2d) 395 (C.A.)

22. Moreover, the Regulation does not establish with any degree of precision the criteria the Board must use when exercising its authority to classify and censor films. Although s. 21(1) requires the Board to "consider the film in its entirety and take into account the general character and integrity of the film", and s. 21(2) specifies certain activities in films which can be the basis for censorship, the Act and regulations contains no standards to indicate when or in what context these activities are objectionable. Because these regulations affect a fundamental freedom, any vagueness in the standards imposed should be subject to stringent scrutiny.

O. Reg. 56/85

Videoflicks, supra

Fifth Issue Appeal

23. It is respectfully submitted that this Court, on appeal fron the Board of Review, must determine as a matter of fact whether the film in question violates the standards in The Theatres Act.

Theatres Act, s. 35 (9)

24. The general character and integrity of the film Amerika indicate that the scenes of sexual activity are not intended to appeal to purient interests. Nor do they in fact appeal to these interests. The film does not violate community standards of tolerance. The scenes of sexual activity are an integral part of the filmmaker's "vision" of "Amerika" and an important part of the "message" regarding his view of the decadence of America. Far from degrading women, the film mocks and attacks a social, cultural, and economic system that degrades women. The film, taken as a whole, or in its parts, does not unduly exploit sex. The filmmaker is a noted artist whose work is technically outstanding and widely praised. His artistic integrity has not been challenged.

Affidavit of David Poole, paragraph 6, Exhibit "E"

Towne Cinema Theatres Ltd. v. R., [1985] 1 S.C.R. 494

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Court File No.

SUPREME COURT OF ONTARIO

(Divisional Court)

B E T W E E N :

ND VIDEO
SOCIETY

Draft

Appellant

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VIEW BOARD

Respondent

AGREEMENT RESPECTING EVIDENCE

The parties herein, pursuant to Rule 61.05(4), agree as follows:

1. The contents of the appeal book shall be:

a) table of contents;

b) Notice of Appeal;

c) letter from Appellant to Respondent, dated February 17, 1985;

d) Board of Censors Summary Report, dated February 18, 1985;

e) letter from Appellant to Respondent, dated March 20, 1985;

f) enclosures to above-noted letter:

   i) Critical Perspectives on Vancouver Avant-Garde Cinema 1970 - 1983 by Al Razutis and Tony Reif;

   ii) Resume of Al Razutis;

   iii) Information on the film Amerika;

   iv) Filmography for Al Razutis;

   v) Analysis: A Message From Our Sponsor by Al Razutis - dated May, 1981.

g) Board of Censors Summary Report, dated March 28, 1985;

h) Order of Mr. Justice Steele, dated March 27, 1986;

i) Affidavit of David Poole;

j) Certificate of Solicitor.

2. No transcript is required, but the film "Amerika" forms part of the evidence on this appeal.

Dated at Toronto, this day of , 1986.

ONTARIO FILM AND VIDEO APPRECIATION SOCIETY per their solicitor, Charles Campbell

ONTARIO FILM REVIEW BOARD per their solicitor, Julian Polika

ONTARIO FILM AND VIDEO APPRECIATION SOCIETY

Applicant

and

ONTARIO FILM REVIEW BOARD

Respondent

(Short title of proceeding)

Court file no.

(Divisional Court)
SUPREME COURT OF ONTARIO
(Supreme or District)

Proceeding commenced at Toronto

AGREEMENT RESPECTING EVIDENCE

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CHARLES CAMPBELL
Solicitor for the Applicant

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SUPREME COURT OF ONTARIO

(DIVISIONAL COURT)

IN THE MATTER OF The Theatres Act, R.S.O. 1980, c. 498, as amended, S.O. 1980, c. 56;

AND IN THE MATTER OF The Judicial Review Procedures Act, R.S.O. 1980, c. 224;

AND IN THE MATTER OF The Constitution Act, 1981 (Canada);

AND IN THE MATTER OF the Constitution Questions Act, R.S.O. 1980, c. 86;

AND IN THE MATTER OF a certain application to the Ontario Film Review Board appointed under The Theatres Act;

B E T W E E N:

ONTARIO FILM AND VIDEO APPRECIATION SOCIETY

Applicant

- and -

ONTARIO FILM REVIEW BOARD

Respondent

NOTICE OF MOTION

The Applicant, The Canadian Civil Liberties Association will make a motion to the Divisional Court on the date set down by the Registrar for the hearing of the application for judicial review herein, at Osgoode Hall, 130 Queen Street West, Toronto.

THE MOTION IS FOR an Order granting the Applicant leave to intervene as a friend of the Court for the purpose of rendering assistance to the Court by way of argument.

THE GROUNDS FOR THE MOTION ARE:

(a) leave to intervene as a friend of the court for the purpose of rendering assistance to the court by way of argument would be appropriate pursuant to Rule 13.02;

(b) such further grounds as may appear from the Applicant's factum, filed herewith.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

(a) the Affidavit of A. Alan Borovoy, filed herewith;

(b) such further and other material as counsel may advise.

March 27, 1986

Robert J. Sharpe
78 Queen's Park Cr.
Toronto, Ontario
M5S 1A1
978-4619

Solicitor for the
Canadian Civil Liberties
Association.

Iler, Campbell & Associates
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J. Polika, Q.C. (416) 965-4118
Solicitor for the Respondent.

SUPREME RT OF ONTARIO (DIVISIONAL COURT)

IN THE MATTER OF The Theatres Act, R.S.O. 1980 c.498, as amended, S.O. 1980, c.56;

AND IN THE MATTER OF The Judicial Review Procedures Act, R.S.O. 1980, c. 224;

AND IN THE MATTER OF The Constitution Questions Act, R.S.O. 1980, c. 86;

AND IN THE MATTER OF a certain application to the Ontario Film Review Board appointed under The Theatres Act;

ONTARIO FILM AND VIDEO APPRECIATION SOCIETY

- and -

ONTARIO FILM REVIEW BOARD

NOTICE OF MOTION

ROBERT J. SHARPE
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Solicitor for the
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Liberties Association
978-4619

SUPREME COURT OF ONTARIO

(DIVISIONAL COURT)

IN THE MATTER OF The Theatres Act, R.S.O. 1980, c. 498, as amended, S.O. 1980, c. 56;

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B E T W E E N:

ONTARIO FILM AND VIDEO APPRECIATION SOCIETY

Applicant

- and -

ONTARIO FILM REVIEW BOARD

Respondent

A F F I D A V I T

I, A. Alan Borovoy, of the City of Toronto, in the Municipality of Metropolitan Toronto, Barrister and Solicitor. **MAKE OATH AND SAY AS FOLLOWS:**

1. I am General Counsel of the Canadian Civil Liberties Association (the "Association") and as such have knowledge of the matters hereinafter deposed to.

2. The Association seeks leave to intervene as friend of the court in the argument of this matter.

3. The Association is a national organization with more than 5,000 individual members drawn from all walks of life, 8 affiliated chapters across the country, and some 20 associated group members which themselves represent several thousands of individuals.

4. The Association was originally constituted for the purpose of promoting respect for and observance of fundamental human rights and civil liberties, and to defend, extend and foster the recognition of those rights and liberties.

5. The major objectives of the Association continue to include the promotion of the legal protction of the freedom and dignity of the individual against unreasonable invasion by public authority, and the promotion of fair procedures for the determination of each individual's legal rights and obljgations.

6. The Association has been intimately involved from the beginning in the legislative history of the Constitution Act, 1982, and has made a number of submissions to the Government of Canada and to Parliamentary committees relating to proposals for the content of a charter of rights and freedoms. Many of the Association's proposals were adopted by the Parliament of Canada in the version of the Charter which was finally adopted, and the Association was one of three organizations whose contributions were given special mention by the Minister of Justice for Canada when introducing the amendments to alter the Charter to the form which was finally enacted.

7. The Association has been granted leave to intervene in many cases in the last few years. These include:

Morgentaler v. The Queen, [1976] 1 S.C.R. 616, (1974) 9 N.S.R. (2d) 483 (S.C.C.)

The Nova Scotia Board of Censors v. McNeil, [1976] 2 S.C.R. 265 (S.C.C.)

Miller and Cockriell v. The Queen, [1977] 2 S.C.R. 680 (S.C.C.)

Re Legislative Privilege (1978), 39 C.C.C. (2d) 266 (Ont. C.A.)

Regina v. Pink Triangle Press et al., (1980), 51 C.C.C. (2d) 485 (Ont. Co. Ct.)

Regina v. Saxell (1980), 59 C.C.C. (2d) 176 (Ont. C.A.)

A.G. Nova Scotia v. MacIntyre (1982), 132 D.L.R. (3d) 385 (S.C.C.)

Re: Ontario Film and Video Appreciation Society and Ontario Board of Censors (1983), 41 O.R. (2d) 583 (Ont. Div'l. Ct.); 45 O.R. (2d) 30 (Ont. C.A.)

Re: Klein and Law Society of Upper Canada; Re Dvorak and Law Society of Upper Canada (1985), 50 O.R. (2d) 118 (Ont. Div'l. Ct.) (leave to intervene in appeal to Ontario Court of Appeal granted May 13, 1985).

8. The Association is concerned that important issues of the interpretation of the Charter of Rights and Freedoms may be argued in the context of a party's special interests without the advantage of argument from the broader perspective of the long-term development of Charter jurisprudence.

9. The Association has retained Robert J. Sharpe, Barrister, to make this application on its behalf. The Association therefore requests the application for intervention be heard and leave to intervene be granted. The Association will seek no order as to costs either in respect of this motion or in respect of any intervention in this matter.

10. I make this Affidavit in support of the notice of motion to this Honourable Court for application to intervene herein for for no improper purpose.

SWORN BEFORE ME at the City of Toronto in the Municipality of Metropolitan Toronto this 27th day of March, 1986.

A. ALAN BOROVOY

A COMMISSIONER ETC.

SUPREME C[illegible]T OF ONTARIO (DIVISIONAL COURT)

IN THE MATTER OF The Theatres Act, R.S.O. 1980 c.498, as amended, S.O. 1980, c.56;

AND IN THE MATTER OF The Judicial Review Procedures Act, R.S.O. 1980, c. 224;

AND IN THE MATTER OF The Constitution Questions Act, R.S.O. 1980, c. 86;

AND IN THE MATTER OF a certain application to the Ontario Film Review Board appointed under The Theatres Act;

ONTARIO FILM AND VIDEO APPRECIATION SOCIETY

- and -

ONTARIO FILM REVIEW BOARD

A F F I D A V I T

ROBERT J. SHARPE
78 Queen's Park Cres.
Toronto, Ontario
M5S 1A1
Solicitor for the
Canadian Civil
Liberties Association
978-4619

SUPREME COURT OF ONTARIO

(DIVISIONAL COURT)

IN THE MATTER OF The Theatres Act, R.S.O. 1980, c. 498, as amended, S.O. 1980, c. 56;

AND IN THE MATTER OF The Judicial Review Procedures Act, R.S.O. 1980, c. 224;

AND IN THE MATTER OF The Constitution Act, 1981 (Canada);

AND IN THE MATTER OF The Constitution Questions Act, R.S.O. 1980, c. 86;

AND IN THE MATTER OF a certain application to the Ontario Film Review Board appointed under The Theatres Act;

B E T W E E N:

ONTARIO FILM AND VIDEO APPRECIATION SOCIETY

Applicant

- and -

ONTARIO FILM REVIEW BOARD

Respondent

APPLICANT'S FACTUM: APPLICATION TO INTERVENE

PART I NATURE OF APPLICATION

1. The Canadian Civil Liberties Association (the "Association") seeks leave to intervene as a friend of the Court, to present written and oral argument in respect of the matters in issue.

PART II FACTS

2. The Association is a national organization with more than 5,000 individual members drawn from all walks of life, 8 affiliated chapters across the country, and some 30 associated group members which

themselves represent several thousands of individuals.

Affidavit of A. Alan Borovoy, para. 3

3. The Association was founded for the purpose of promoting respect for and obedience to fundamental human rights and civil liberties, including freedom of expression and the right of citizens to have their rights and obligations determined in accordance with the principles of fundamental justice, and those remain the major objectives of the Association at the present time.

Affidavit of A. Alan Borovoy, paras. 4 and 5

4. The Association has been intimately involved from the beginning of the legislative history of the Constitution Act, 1982 and has made a number of submissions to the Government of Canada and to Parliamentary committees, and has made a significant contribution to the content of the Charter of Rights and Freedoms in the form in which it was finally enacted.

Affidavit of A. Alan Borovoy, para. 6

5. The Association has frequently been granted leave to appear before the courts as intervenor or amicus curiae, in cases where

issues of freedom of expression have arisen, including the case of Re Ontario Film and Video Appreciation Society and Ontario Board of Censors which determined that the legislation and regulation then in force did not comply with the requirements of the Charter, and which decision led directly to the legislation and regulations at issue in the present case.

Affidavit of A. Alan Borovoy, para. 7

PART III ARGUMENT

6. Intervention as a friend of the Court or as amicus curiae in cases involving constitutional and public law issues is particularly appropriate, and has become common in Canadian courts at all levels.

Rules of Civil Procedure, 13.02.
Re: Schofield and Minister of Consumer and Commercial Relations (1980), 28 O.R. (2d) 764 (Ont. C.A.).

A.G. Nova Scotia v. MacIntyre (1982), 132 D.L.R. (3d) 385 (S.C.C.)

The Nova Scotia Board of Censors v. McNeil, [1976] 2 S.C.R. 265.

Re Ontario Film and Video Appreciation Society and Ontario Board of Censors (1983), 41 O.R. (2d) 583, aff'd 45 O.R. (2d) 80 (Ont. C.A.)

Re Klein and Law Society of Upper Canada; Re Dvorak and Law Society of Upper Canada (1985), 50 O.R. (2d) 118 (Ont. Div'l. Ct.).

R. v. Seaboyer and Gayme (February 26, 1986) (Ont. C.A.)

Re Canadian Labour Congress and Bhindi (1985) 17 D.L.R. (4th) 193 (B.C.C.A.)

R. v. Swain (1986) 53 O.R. (2d) 609 (Ont. C.A.)

7. Intervention by public interest groups whose objectives and purposes encompass the subject matter of the litigation has been found appropriate in cases which challenge the validity of restrictions on freedom of expression and freedom of the press and other media of communication.

Re Ontario Film and Video Appreciation Society and Ontario Bd. of Censors, supra.

Nova Scotia Board of Censors v. McNeil, supra.

Re Klein and Law Society of Upper Canada, supra.

8. The constitutional guarantee of freedom of expression and freedom of the press and other media of communication includes the right to receive as well as to utter or convey information.

Nova Scotia Board of Censors v. McNeil, supra.

Re Ontario Film and Video Appreciation Society and Ontario Bd. of Censors, supra.

9. The interest asserted by the Applicant Ontario Film and Video Appreciation Society that of a licenced distributor of films and videotapes which aims to stimulate interest in that art form.

10. The Respondent Ontario Film Board's interest is that of justifying the restriction freedom of expression as an exercise of its statutory mandate to regulate, control and censor films and videotapes.

11. It is submitted that the issues raised by these Applications directly affect the rights and freedoms guaranteed by the Constitution which extend beyond the particular commercial, professional or artistic interests of the Applicant and beyond the regulatory interest of the Respondent, and that the Association should be heard by this Honourable Court to elucidate such different and broader interests.

12. In particular, it is submitted that at stake in this litigation is the constitutional right of freedom of expression guaranteed to members of the public to view the films and videotapes the Applicants seek to distribute for public viewing.

13. It is therefore submitted that even if a strict and narrow test for intervention is to be applied, the Association satisfies that test and should therefore be given leave to present written and oral argument herein.

14. If given leave to intervene as a friend of the Court, the Association will not seek to broaden the lis now before the Court, but will ask the Court to consider legal arguments and authorities which relate directly to the lis. Moreover, counsel for the Association will not repeat arguments made by the parties, and will only seek to present matters not advanced by either of the parties herein.

15. Reference may also be made to the following authorities where intervenor status was granted to groups similar to the Association.

Attorney-General of Canada v. Law Society of British Columbia (1982), 137 D.L.R. (3d) 1 (S.C.C.)

Re Federal Republic of Germany and Rauca (1982), 41 O.R. (2d) 225 (Ont. C.A.)

Law Society of Upper Canada v. Skapinker (1984), 9 D.L.R. (4th) 161 (S.C.C.)

Re Association of Parents for Fairness in Education et al. (1984), 8 D.L.R. (4th) 238 (N.B.C.A.)

PART IV ORDER SOUGHT

16. The Association seeks an Order granting it leave to intervene as a friend of the court for the argument of the application for judicial review for the purpose of rendering assistance to the Court by way of argument.

All of which is respectfully submitted.

Robert J. Sharpe,
Counsel for the Canadian
Civil Liberties Association.

SCHEDULE "A"

LIST OF AUTHORITIES

1. Re Schofield and Minister of Consumer and Commercial Relations (1980), 28 O.R. (2d) 764 (Ont. C.A.).

2. A.G. Nova Scotia v. MacIntyre (1982), 132 D.L.R. (3d) 385 (S.C.C.).

3. The Nova Scotia Board of Censors v. McNeil, [1976] 2 S.C.R. 265.

4. Re Ontario Film and Video Appreciation Society and Ontario Board of Censors (1983), 41 O.R. (2d) 583, aff'd 45 O.R. (2d) 80 (Ont. C.A.).

5. Re Klein and Law Society of Upper Canada; Re Dvorak and Law Society of Upper Canada (1985), 50 O.R. (2d) 118 (Ont. Div'l. Ct.).

6. R. v. Seaboyer and Gayme (February 26, 1986) (Ont. C.A.)

7. Re Canadian Labour Congress and Bhindi (1985) 17 D.L.R. (4th) 193 (B.C.C.A.).

8. R. v. Swain (1986) 53 O.R. (2d) 609 (Ont. C.A.).

9. Attorney-General of Canada v. Law Society of British Columbia (1982), 137 D.L.R. (3d) 1 (S.C.C.).

10. Re Federal Republic of Germany and Rauca (1982), 41 O.R. (2d) 225 (Ont. C.A.).

11. Law Society of Upper Canada v. Skapinker (1984), 9 D.L.R. (4th) 161 (S.C.C.).

12. Re Association of Parents for Fairness in Education et al. (1984), 8 D.L.R. (4th) 238 (N.B.C.A.).

SUPREME COURT OF ONTARIO (DIVISIONAL COURT)

409/85

IN THE MATTER OF The Theatres Act, R.S.O. 1980, c. 498, as amended, S.O. 1980, c. 56;

AND IN THE MATTER OF The Judicial Review Procedures Act, R.S.O. 1980, c. 224;

AND IN THE MATTER OF The Constitution Questions Act, R.S.O. 1980, c. 86;

AND IN THE MATTER OF a certain application to the Ontario Film review Board appointed under the Theatres Act;

ONTARIO FILM AND VIDEO APPRECIATION SOCIETY

- and -

ONTARIO FILM REVIEW BOARD

APPLICANT'S FACTUM: APPLICATION TO INTERVENE

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Solicitor for the Applicant Canadian Civil Liberties Association

409/85

SUPREME COURT OF ONTARIO

(DIVISIONAL COURT)

IN THE MATTER OF The Theatres Act, R.S.O. 1980, c. 498, as amended, S.O. 1980, c. 56;

AND IN THE MATTER OF The Judicial Review Procedures Act, R.S.O. 1980, c. 224;

AND IN THE MATTER OF The Constitution Act, 1981 (Canada);

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AND IN THE MATTER OF a certain application to the Ontario Film Review Board appointed under The Theatres Act;

B E T W E E N:

ONTARIO FILM AND VIDEO APPRECIATION SOCIETY

Applicant

- and -

ONTARIO FILM REVIEW BOARD

Respondent

INTERVENOR'S FACTUM

PART I - THE PARTIES AND NATURE OF PROCEEDINGS

1. The Canadian Civil Liberties Association seeks leave to intervene as a friend of the Court to present this written argument,

and to present oral argument based thereon, with respect to the appeal and application for judicial review of the decision of the Respondent, pursuant to the Theatres Act as amended, refusing to approve for exhibition or distribution the film Amerika without certain cuts being made.

PART II - THE FACTS

2. The Intervenor agrees with the facts as stated in the Applicant's factum.

PART III - THE ISSUES AND THE LAW

A. FREEDOM OF EXPRESSION INFRINGED CONTRARY TO CHARTER

3. Section 2(b) of the Canadian Charter of Rights and Freedoms guarantees and designates as fundamental, freedom of expression, including freedom of the press and other media of communication. This provision protects all forms of expression, whether oral, pictorial, sculpture, music, dance or film.

Re Ontario Film and Video Appreciation Society and Ontario Board of Censors (1983) 41 O.R. (2d) 583 (Div'l Ct.) affirmed 45 O.R. (2d) 89

R v. Videoflicks Ltd. et al. (1984) 48 O.R. (2d) 395 at p. 431 (Ont. C.A.).

4. Freedom of expression extends to all participants in the dissemination of information and communication, from originators through recipients. It also extends to the distribution of someone else's work, regardless of the derivation of any profit therefrom.

> Re Ontario Film and Video Appreciation Society and Ontario Board of Censors, supra.
>
> R. v. Videoflicks Ltd. et al., supra.
>
> Re Information Retailers Association of Metropolitan Toronto Inc. and Municipality of Metropolitan Toronto Re Canadian Periodical Publishers Association and Municipality of Metropolitan Toronto (1985) 52 O.R. (2d) 449 at 468.

5. The power of the Ontario Film Review Board, under Section 3(5)(a) of The Theatres Act, to disallow the public distribution and exhibition of motion pictures, is a prima facie violation of the freedom of expression guaranteed by s.2(b) of the Charter.

> Re Ontario Film and Video Appreciation Society and Ontario Board of Censors, supra.

B. NO REASONABLE JUSTIFICATION FOR INFRINGEMENT OF FREEDOM OF EXPRESSION

6. Once an infringement of a Charter right has been shown, the onus shifts to those seeking to uphold the constitutionality of the impugned legislation under section 1 of the Charter.

The Queen v. Oakes (Unreported judgment of the Supreme Court of Canada, delivered February 28, 1986), per Dickson, C.J.C., at p. 38.

Re Federal Republic of Germany and Rauca (1983) 41 O.R. (2d) 225, at pp. 240-1 (Ont. C.A.).

7. Section 1 of the Charter requires that the means used in limiting freedom of expression impair that freedom as little as possible.

R. v. Oakes, supra per Dickson, C.J.C. at 40.

R. v. Big M Drug Mart [1985] 1 S.C.R. 295, per Dickson, C.J.C. at 352.

8. It is submitted that the censorship scheme contained in The Theatres Act cannot be upheld under s.1 of the Charter, as being a reasonable limit "prescribed by law, as can be demonstrably justified in a free and democratic society".

(i) POWER TO CENSOR UNJUSTIFIABLE

9. Not every governmental objective will satisfy the test for justifiability under s.1. Rather, such objective must be "of sufficient importance to warrant overriding a constitutionally protected right or freedom."

R. v. Oakes, supra per Dickson, C.J.C. at 40.

R. v. Big M. Drug Mart Ltd., supra at 352.

10. At the very least, such objective must relate "to concerns which are pressing and substantial in a free and democratic society," and in the case of limiting freedom of expression, it is particularly important that there "be actual demonstration of harm or a real likelihood of harm to a society value before a limitation can be said to be justified".

R. v. Oakes, supra per Dickson C.J.C. at 41.

National Citizens' Coalition Inc. Coalition Nationale des Citoyens Inc and Brown v. Attorney General of Canada (1984) 32 A.L.R. (2d) 249 per Medhurst J. at p. 264, (Alta. Q.B.).

11. In order to be justifiable under s.1 of the Charter, the measures adopted by the legislature must be carefully designed to achieve the objective in question. They should not infringe unnecessarily the freedoms guaranteed by the Charter.

R. v. Oakes, supra per Dickson C.J.C. at 41.

Re Southam Inc. and The Queen (No. 1) (1985) 41 O.R. (2d) 113 per MacKinnon A.C.J.O. at 134.

Re Information Retailers, supra per Robins J.A. at 181.

12. It is submitted that Section 21 of O/Reg. 56/85, under The Theatres Act is unreasonably and unjustifiably broad in that, as demonstrated by its treatment of the film Amerika, the Board is permitted to refuse to approve a film for public exhibition or distribution solely on the grounds that the film contains:

(a) the explicit depiction of sexual activity;

(b) a scene where there is undue emphasis on human genitals.

13. Specifically at issue in the present case, therefore, is the power of the Respondent to censor and ban from public view material which contains the explicit depiction of sexual activity. The sexual acts listed in Subsection 21(3) of the Regulations elaborating the term "sexual activity" are not per se:

(a) illegal;

(b) violent; or

(c) of such a nature that their exhibition would not be tolerated by contemporary community standards.

R. v. Doug Rankine Company Ltd. and Act III Video Productions Ltd. (1983) 36 C.R. (3d) 154 per Borins C.C.J. (Ont. Ct. Co.).

R. v. Odeon Morton Theatres Ltd. and United Artists Corporation, [1974] 3 W.W.R. 304 (Man. C.A.).

Towne Cinema Theatres Ltd. and The Queen, [1985] 1 S.C.R. 494.

14. It is submitted that there is no evidence sufficient to satisfy the burden imposed by s.1 of the Charter of any valid governmental objective to be achieved through the absolute prohibition of films or videos containing displays of explicit sexual activity.

15. After an extensive study of the question, the Fraser Committee on Pornography and Prostitution concluded that there was no

evidence of harm sufficient to warrant criminalizing, banning or censoring such material, and that the display of explicit, non-violent sexual acts should only be classified or regulated to provide a warning to the public and to protect minors from exposure to it.

Report of the Fraser Commission on Pornography and Prostitution, vol. 1 at pp. 270.

16. The Committee also concluded that there was no demonstration that the public interest required that provincial boards be empowered to censor rather than classify films and videos. The Committee stated: "One way of ensuring compliance with the Charter is to remove from the provincial boards the power to cut or to ban films. We prefer this approach" (emphasis added).

Ibid. at p. 333

17. It is therefore submitted that the censorship powers conferred upon the Respondent by the Act and the Regulations cast a net too wide and therefore should be declared inoperative as an unjustified and unjustifiable infringement of freedom of expression.

(ii) CENSORSHIP POWER INVALID FORM OF PRIOR RESTRAINT

18. Freedom of expression has long been recognized as a fundamental tenet of the Canadian political system. The Courts have

recognized the importance of leaving free speech unfettered by prior restraints.

Re Alberta Statutes [1938] S.C.R. 100, per Cannon J. at 146.

Switzman v. Elbling, [1957] S.C.R. 285, per Rand J. at 306.

Canada Metal Co., Ltd. et al. v. C.B.C. (1974) 3 O.R. (2d) 1, aff'd 7 O.R. (2d) 261.

William Coulson & Sons v. James Coulson & Co. (1876), 3 T.L.R. 846.

Bonnard v. Perryman, [1891] 2 Ch. 269.

19. Prior restraint is a drastic infringement of freedom of expression. It judges too soon and suppresses expression before it can be determined whether it is constitutionally protected or not. Even if it may sometimes be justified to hold persons subsequently responsible for the content or manner of their expression, prohibiting that expression altogether can only be justified where necessary to meet the most extreme circumstances.

New York Times v. U.S., 403 U.S. 713 (1971).

20. Systems of executive prior restraint, as distinguished from subsequent judicial punishment, have been decried from their very inception.

> "The liberty of the press is indeed essential to the nature of a free state; but this consists in laying no previous restraints upon publications, and not in freedom of censure for criminal matter when published.
>
> Blackstone's Commentaries on the Laws of England, Vol. 4, pp. 151-152.

21. Although this freedom from prior restraint has historically been related to so-called "political" speech, the Charter has been recognized to protect all forms of expression, including motion pictures, and it is submitted that the scheme of prior restraint contemplated by The Theatres Act and Regulation 56/85 is offensive to and inconsistent with the guarantee of freedom of expression in s.2 of the Charter.

(iii) SCHEME OF PRIOR RESTRAINT PROCEDURALLY INADEQUATE

22. In the alternative, it is submitted that expression should be enjoined, if at all, only after a prompt, full, fair, contested and impartial hearing.

> Freedman v. Maryland 380 U.S. 51 (1965).
>
> Southeastern Promotions, Ltd. v. Conrad 420 U.S. 546 (1975).
>
> Vance v. Universal Amusement Co. Inc. 445 U.S. 308 (1980).

23. The current administrative licensing scheme contained in The Theatres Act falls short of that standard and delays a conclusive

judicial determination of whether expression falls outside of the constitutional protection of the Charter.

The Theatres Act, R.S.O. 1980, c. 498, as amended S.O. 1984, c. 56, s.35.

24. The censorship scheme enshrined in The Theatres Act as amended contains all of the dangers and pitfalls of an administrative prior restraint.

25. It is at all times incumbent upon the applicant to initiate proceedings to get the film released. This creates a dangerous chilling effect upon expression. Moreover, the burden is removed from the authorities to exercise their procecutorial discretion sparingly and with care.

"The Doctrine of Prior Restraint", Thomas G. Emerson, 20 Law & Contemporary Problems, 648 (1955).

Freedman v. Maryland, supra.

26. The Board's deliberations are insulated from public scrutiny and are carried out without the procedural safeguards of a full, adversarial proceeding, including reasons for decision.

Ridge v. Baldwin, [1964] A.C. 40.

Emerson, supra.

27. The members of the Board sit both as judges and prosecutors. The result is an institutional propensity to overregulate expression.

Hunter v. Southam Inc., [1984] 2 S.C.R. 145 per Dickson J. at 163-165.

Emerson, supra.

28. There are no guarantees of a prompt judicial review of the Board's decision on the merits.

Freedman v. Maryland, supra.

29. Although reviewable by a Court, the Board's powers amount to a total denial of expression where the essence of the work is its timeliness.

Tribe, American Constitutional Law (1978) Ch. 12.

30. It is therefore submitted that the current censorship scheme contained in The Theatres Act is an unreasonable prior restraint on freedom of expression. It cannot be said to be a "reasonable" limit on freedom of expression under Section 1 of the Charter.

C. CENSORSHIP POWERS ULTRA VIRES

31. It is submitted that the censorship scheme contained in The Theatres Act regulates public morals. It is therefore ultra vires the provincial legislature as impinging on the Federal power in relation to criminal law.

Constitution Act, 1867, s. 91 (27).

Westendorp v. The Queen, [1983] 1 S.C.R. 43.

A.G. Ontario v. Hamilton Street Rwy. Co., [1903] A.C. 524 (J.C.P.C.).

32. The Film Review Board's authority to prohibit the distribution and exhibition of a film by reason of its content is a

clear attempt to legislate in relation to public morals. This is belied by s. 21 of the Regulations, which, unlike the provisions considered in the McNeil case, specifies, for example, the depiction of explicit sex and violence as grounds for censorship.

Nova Scotia Board of Censors et al. v. McNeil,
[1978] 2 S.C.R. 662.

28. Furthermore, defiance of the Board attracts a strict criminal sanction under Section 61 of the Act. Nor can it be said that the legislation is aimed solely at the prevention of crime.

Westendorp v. The Queen, supra.

29. Those provisions of the Act dealing with the classification of films and the regulation of public venues are not under attack. The authority of the Board to prohibit the showing of a film, however, does go beyond the provincial power of regulation, and that the power to prohibit, can and should be severed from the other provisions.

Re Nordee Investments Ltd. and City of Burlington
(1984) 48 O.R. (2d) 123 per Cory J.A. at 135
(Ont. C.A.).

30. In any event, the standards set out in Section 21 of the Regulations are stricter than those under Sections 159 & 163 of the Criminal Code and are therefore in direct conflict with them. The

doctrine of paramountry requires that the provincial legislation be struck down.

Re Nordee Investments Ltd. and City of Burlington, supra at p. 138.

Re Sherwood Park Restaurants Inc. et al. and Town of Markham (1984), 48 O.R. (2d) 449 (Ont. C.A.).

Re Koumoudouros et al. and Municipality of Metropolitan Toronto (1985), 52 O.R. (2d) 442 (Ont. C.A.).

Multiple Access Ltd. v. McCutcheon et al., [1982] 2 S.C.R. 161.

PART IV - ORDER REQUESTED

The Intervenor therefore submits that the appeal and the application review should be allowed, that the decision of the Respondent Ontario Film Review Board pertaining to the film Amerika be granted, and that ss. 3(5)(a) and (b) and ss. 13 and 15 of The Theatres Amendment Act, S.O. 1984, C.56 and Regulation 56/85, s.21 be declared of no force or effect to the extent that said provisions are inconsistent with s. 2(b) of the Charter of Rights and Freedoms, or in the alternative, ultra vires the province.

All of which is respectfully submitted

Robert J. Sharpe
Counsel for the Canadian Civil Liberties Association.

SCHEDULE "A"

1. Ontario Film and Video Appreciation Society and Ontario Board of Censors (1983) 41 O.R. (2d) 583 (Div'l Ct.) affirmed 45 O.R. (2d) 89.

2. R v. Videoflicks Ltd. et al. (1984) 48 O.R. (2d) 395.

3. Re Information Retailers Association of Metropolitan Toronto Inc. and Municipality of Metropolitan Toronto Re Canadian Periodical Publishers Association and Municipality of Metropolitan Toronto (1985) 52 O.R. (2d).

4. The Queen v. Oakes (Unreported judgment of the Supreme Court of Canada, delivered February 28, 1986).

5. Re Federal Republic of Germany and Rauca (1983) 41 O.R. (2d) 225.

6. R. v. Big M Drug Mart [1985] 1 S.C.R. 295.

7. National Citizens' Coalition Inc. Coalition Nationale des Citoyens Inc and Brown v. Attorney General of Canada (1984) 32 A.L.R. (2d) 249.

8. Re Southam Inc. and The Queen (No. 1) (1985) 41 O.R. (2d) 113.

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10. R. v. Odeon Morton Theatres Ltd. and United Artists Corporation, [1974] 3 W.W.R. 304 (Man. C.A.).

11. Towne Cinema Theatres Ld. and The Queen [1985] 1 S.C.R. 494.

12. Report of the Fraser Commission on Pornography and Prostitution, vol.1.

13. Re Alberta Statutes [1938] S.C.R. 199.

14. Switzman v. Elbling, [1957] S.C.R. 285.

15. Canada Metal Co., Ltd. et al. v. C.B.C. (1974) 3 O.R. (2d) 1, aff'd 7 O.R. (2d) 261.

16. William Coulson & Sons v. James Coulson & Co. (1876), 3 T.L.R. 846.

17. Bonnard v. Perryman, [1891] 2 Ch. 269.

18. New York Times v. U.S., 403 U.S. 713 (1971).

19. Freedman v. Maryland 380 U.S. 51 (1965).

20. Southeastern Promotions, Ld. v. Conrad 420 U.S. 546 (1975).

21. Vance v. Universal Amusement Co. Inc. 445 U.S. 308 (1980).

22. Ridge v. Baldwin, [1964] A.C. 40.

23. Hunter v. Southam Inc., [1984] 2 S.C.R. 145.

24 Tribe, American Constitutional Law (1978) Ch. 12.

25. Constitution Act, 1867, s.91 (27).

26. Westendorp v. The Queen, [1983] 1 S.C.R. 43.

27. A.G. Ontario v. Hamilton Street Rwy. Co. [1903] A.C. 524 (J.C.P.C.),

28. Nova Scotia Board of Censors et al. v. McNeil, [1978] 2 S.C.R. 662.

29. Re Nordee Investments Ltd. and City of Burlington (1984) 48 O.R. (2d) 123 (Ont. C.A.).

30. Re Sherwood Park Restaurants Inc. et al. and Town of Markham (1984), 48 O.R. (2d) 449 (Ont. C.A.).

31. Re Koumoudouros et al. and Municipality of Metropolitan (1985), 52 O.R. (2d) 442 (Ont. C.A.).

32. Multiple Access Ltd. v. McCutcheon et al., [1982] 2 S.C.R. 161.

I

No. 409/85

SUPREME COURT OF ONTARIO

(Divisional Court)

IN THE MATTER OF The Theatres Act, R.S.O. 1980, c.498, as amended S.O. 1984, c.56;

AND IN THE MATTER OF The Judicial Review Procedure Act, R.S.O. 1980, c. 224;

AND IN THE MATTER OF the Constitution Act, 1981 (Canada);

AND IN THE MATTER OF the Constitutional Questions Act, R.S.O. 1980, c. 86;

AND IN THE MATTER OF a certain application to the Ontario Film Review Board appointed under The Theatres Act;

B E T W E E N:

ONTARIO FILM AND VIDEO APPRECIATION SOCIETY

Applicant

- and -

ONTARIO FILM REVIEW BOARD

Respondent

AFFIDAVIT OF ELAINE GUGGINS

I, ELAINE GUGGINS, of the City of Toronto, in the Municipality of Metropolitan Toronto, make oath and say as follows:

1. I am employed as the General Manager of the Theatres Branch of the Ministry of Consumer and Commercial Relations and as such have knowledge of the matters deposed to in paragraphs 3, 7 and 8.

2. In April of 1982, the Ontario Film and Video Appreciation Society (hereinafter "O.F.A.V.A.S.") submitted the films "Rameau's Nephew", "The Art of Worldly Wisdom", "Not A Love Story", and "Amerika" to the Theatres Branch of the Ministry of Consumer and Commercial Relations. Now shown to me and marked as Exhibit "A" to this my affidavit is the following correspondence which, I am informed by Stephen Mason (a solicitor for the respondents) and verily believe, was the Record of the Theatres Branch in its consideration of the said films (I am unable to locate items (a), (d), (e), and (g) in our files due to the fact that they are currently being re-organized):

(a) letter dated April 19, 1982, from O.F.A.V.A.S to Theatres Branch;

(b) letter and formal request to Theatres Branch from National Film Board of Canada dated April 20, 1982;

(c) letter from Theatres Branch to O.F.A.V.A.S. dated April 28, 1982, with enclosed permits;

(d) letter from solicitors for O.F.A.V.A.S. to Theatres Branch dated April 30, 1982;

(e) letter from Theatres Branch to O.F.A.V.A.S. dated May 3, 1982, re film "Amerika";

(f) letter from Theatres Branch to National Film Board of Canada dated May 3, 1982;

(g) memorandum to file dated May 17, 1982.

3. Now shown to me and marked as Exhibit "B" to this my affidavit is a true copy of the 1982-1983 Theatres Branch Annual Report.

4. Now shown to me and marked as Exhibit "C" to this my affidavit are a set of documents which, I am informed by Stephen Mason and verily believe are true copies of the exhibits which were before the Ontario Legislature's Standing Committee on the Administration of Justice which considered the Theatres Amendment Act.

5. Now shown to me and marked as Exhibit "D" to this my affidavit are, I am informed by Stephen Mason and verily believe, true copies of the transcripts of the public hearings held by the said Standing Committee on the 5th, 6th, and 7th of December, 1984.

6. Now shown to me and marked as Exhibit "E" to this my affidavit is, I am informed by Stephen Mason and verily believe, a true copy of the transcript of the debates in the Ontario Legislature which preceded the passing of the Theatres Amendment Act.

7. Now shown to me and marked as Exhibit "F" to this my affidavit is a report prepared by the Theatres Branch summarizing its decisions on all films and videotapes submitted to it during the period from April 1, 1985 to March 31, 1986.

8. Now shown to me and marked as Exhibit "G" to this my affidavit are true copies of monthly "elimination reports" prepared by the Theatres Branch for the period from February 1985 (when, I am informed, Ontario Regulation 56/85 came into effect) to the end of January, 1986. These reports describe all scenes which the Ontario Film Review Board has required to be cut from films submitted for approval during this period.

9. Now shown to me and marked as Exhibit "H" to this my affidavit is a document which, I am informed by Stephen Mason and verily believe, is a true copy of a portion of a public opinion survey entitled "A Survey of Attitudes in Ontario" which was prepared for the Ministry of Consumer and Commercial Relations in 1979.

10. Now shown to me and marked as Exhibit "I" to this my affidavit is a document which, I am informed by Stephen Mason and verily believe, is a true copy of a portion of a public

opinion survey entitled "Ontario Consumer Issues" which was prepared for the Ministry of Consumer and Commercial Relations in 1983.

SWORN before me at the City of)
)
Toronto, in the Municipality of)
)
Metropolitan Toronto, this 26th)
)
day of August, 1986.)

ELAINE GUGGINS

A Commissioner, etc.

ILER, CAMPBELL & ASSOCIATES
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J

COURT FILE NO. 409/85
COURT FILE NO. 830/86

SUPREME COURT OF ONTARIO

(DIVISIONAL COURT)

IN THE MATTER OF The Theatres Act, R.S.O. 1980, c. 498, as amended S.O. 1984, c. 56;

AND IN THE MATTER OF The Judicial Review Procedure Act, R.S.O. 1980, c. 224;

AND IN THE MATTER OF The Constitution Act, 1981 (Canada);

AND IN THE MATTER OF the Constitutional Questions Act R.S.O. 1980, c. 86;

AND IN THE MATTER OF a certain application to the Ontario Film Review Board appointed under The Theatres Act;

BETWEEN:

ONTARIO FILM AND VIDEO APPRECIATION SOCIETY

Applicant

-and-

ONTARIO FILM REVIEW BOARD

Respondent

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COURT FILE NO. 409/85
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PART I

THE NATURE OF THE APPEAL/APPLICATION

1. The Ontario Film and Video Appreciation Society (OFAVAS) has appealed the decision of the Ontario Film Review Board dated March 28, 1985, respecting the film "Amerika" on the basis that the Board erred in fact.

2. In addition OFAVAS in its appeal and by way of Application for Judicial Review seeks to have sections 3(5)(a) and (b), 35, 36, 38 and 39 of the Theatres Act R.S.O. 1980, c. 498 as amended and section 21 of R.R.O. 1980 as substituted by O.Reg. 56/85 declared ultra vires and contrary to section 2 of the Canadian Charter of Rights and Freedoms (Charter).

7. The Ontario Board of Censors appealed and OFVAS cross-appealed (both with leave) to the Court of Appeal and both the appeal and cross-appeal were dismissed.

(i) Re O.F.A.V.A.S. and Ontario Board of Censors (1984) 45 O.R. (2d) 80

8. The Ontario Board of Censors obtained leave to appeal to the Supreme Court of Canada on April 4, 1984.

9. On December 14, 1984, the Theatres Amendment Act S.O. 1984 c. 56 received Royal assent and on February 1st, 1985 new regulations made pursuant to the authority of the Theatres Act, as amended were filed (O. Reg. 56/85) in order to "prescribe by law" the criteria to be employed by the Ontario Film Review Board (Board) in exercising its discretion respecting the approval of films.

10. The pending appeal to the Supreme Court of Canada was discontinued on December 17, 1985 as the legislative changes made the issues on appeal academic.

11. On February 14, 1985, the films "Rameau's Nephew", "the Art of Wordly Wisdom", and "Amerika" were again submitted by OFAVAS to the Board under the new statutory scheme. The Board refused to approve "Amerika" for exhibition and distribution without certain specified eliminations being made because, in its opinion, these scenes contained unacceptable "explicit depiction

of sexual activity" throughout and "undue emphasis on human genital organs".

(i) Record Before the Board, Tabs 1 and 2

12. OFAVAS appealed the decision of the Board by submitting it for reconsideration by another panel of the Board. On March 28, 1985, the new panel refused to approve "Amerika" for exhibition and distribution because it found the film contained scenes of graphic, explicit fellatio, graphic, explicit penetration and graphic masturbation. The new panel, however approved the film for exhibition and distribution classified as "Restricted" if certain eliminations were met.

(i) Record Before the Board Tabs 6 and 7

13. By Application for Judicial Review dated April 25, 1985 OFAVAS sought to quash the decisions of February 18, 1985 and March 28, 1985, made by the Board pertaining to the film "Amerika" and to have certain sections of the Theatres Amendment Act, S.O. 1984, c. 56 declared null and void.

(i) Applicant's Record, pages 1 to 3

14. By Notice of Appeal dated March 21, 1986, OFAVAS appealed from the decision of the Board dated March 28, 1985 to this Honourable Court both on the basis of fact and law, the time for appealing having been extended by Order of the Honourable Mr. Justice Steele dated March 27, 1986.

(i) Appeal Book, Tabs A and G

PART IIB
CONSTITUTIONAL FACTS

FILM REGULATION IN ONTARIO

15. Ontario has regulated film since 1911 when the Theatres Act was first enacted as the Theatres and Cinematographics Act 1 Geo. V c. 763.

16. Under the current legislation all films to be exhibited for direct or indirect gain or to the public and/or distributed for direct and indirect gain in Ontario must be submitted to the Ontario Film Review Board for approval. The Board is obligated to "consider the film in its entirety and take into account the general character and integrity of the film". The Board has the discretion to refuse approval if the film contains certain scenes and depictions set out in the regulations. If the Board approves a film it is obligated to classify the film as well.

(i) Theatres Act, as amended, sections 3(5) and 35
(ii) O.Reg. 56/85, section 21

17. The party submitting the film may appeal the Board's decision respecting approval and classification by submitting the film for reconsideration by a different panel of the Board. The party can appeal the second decision to the Divisional Court on questions of fact or law or both.

(i) Theatres Act, as amended, sections 35(5), 35(8) and 35(9)

18. The Board is comprised of members selected to represent a cross-section of Ontario. Its decision, including reasons, are reported in writing and provided to the party who submitted the film as well as to any member of the public on request.

(i) Respondent's Record, Vol. II, Tab B

FILM REGULATION IN OTHER PROVINCES

19. The Provinces of Nova Scotia, New Brunswick, Quebec, Manitoba, Saskatchewan, Alberta, and British Columbia have legislation providing for the regulation of films which are to be shown publicly. Newfoundland, Prince Edward Island, and the Northwest Territories do not have film review boards but they adopt the decisions of other Provincial Boards.

(i) Theatres and Amusements Act R.S.N.S. 1967 c. 304 as amended by S.N.S. 1972 c. 54

(ii) Theatres, Cinematographs, and Amusements Act R.S.N.B. 1973 c.T-5, as amended by S.N.B. 1977 c.M-11.1, S.N.B. 1978 C.D-11.2, S.N.B. 1979 c. 41, S.N.B. 1979 c. 71, S.N.B. 1980 c. 32.

(iii) An Act Respecting the Cinema R.S.Q. 1977 c.C-18

(iv) The Amusements Act R.S.M. 1970 c.A70 as amended by S.M. 1970 c.96 s.5, S.M. 1972 c.6 s.28-29, S.M. 1972 c.35, S.M. 1972 c.74, S.M. 1974 c.14, S.M. 1974 c.64 s.29, S.M. 1975 c.42 s.2, S.M. 1975 c. 63, S.M. 1978 c.49 s.6, S.M. 1979 c.28 s.2.

(v) The Theatres and Cinematographs Act R.S.S. 1978 c.T-11

(vi) Amusements Act R.S.A. 1980 c.A-41

(vii) Motion Picture Act R.S.B.C. 1979 c. 284 as amended by S.B.C. 1981 c.20 s.48-49

(viii) Report of the committee on Sexual Offences Against Children and Youths (1984) pp. 1109-1110

20. The legislation of Nova Scotia, New Brunswick, Alberta, Saskatchewan, and British Columbia, gives their respective film boards the authority to prohibit the showing of a film.

(i) Nova Scotia, Theatres and Amusements Act, supra s.2(1)(g)
(ii) New Brunswick, Theatres, Cinematographs and Amusements Act, supra, s.32(g)
(iii) Alberta, Amusements Act, supra.
(iv) Saskatchewan, Theatres and Cinematographs Act, supra s.7(3)(a)
(v) B.C., Motion Picture Act, supra.,s.4(c)

21. Most of the provinces have also empowered their film boards to make cuts in films or to insist that cuts be made by the distributor in order to obtain approval for exhibition. These provinces are Saskatchewan, British Columbia, Nova Scotia, Alberta and New Brunswick.

(i) Saskatchewan, Theatres and Cinematographs Act, supra. s.7(3)(b)
(ii) B.C., Motion Picture Act, supra, s.4(b)
(iii) Nova Scotia, Theatres and Amusements Act, supra, s. 17(1)
(iv) Alberta, Reg..72/57 as amended s. 18(1)
(v) New Brunswick, Theatres, cinematographs and Amusements Act, supra, s.25(1)

FILM REGULATION IN OTHER "FREE AND DEMOCRATIC" SOCIETIES

22. Many nations generally regarded as "free and

democratic", such as England, Australia, New Zealand, France and Sweden, have government censorship of films. Others, such as West Germany, Denmark and The Netherlands have chosen to merely classify films and restrict the admission of young people.

(i) Re O.F.A.V.A.S. and Ontario Board of Censors, supra, at p. 590 (Div. Ct.)
(ii) Report of the Special Committee on Pornography and Prostitution (1985) pp. 231-253
(iii) Report of the Committee on Obscenity and Film Censorship U.K. CMND. 7772 (1979)
(iv) deSmith, Constitutional and Administrative Law (5th ed., 1985) pp. 487-488.

SOCIAL SCIENCE DATA ON THE EFFECTS OF MEDIA VIOLENCE AND "PORNOGRAPHY"

23. The general conclusion to be drawn from the many scientific studies of the effects of violence in the media is that it causes a number of social undesirable effects in its viewers, including increased aggression and desensitization to violence.

> "The evidence is clear that exposure to media violence can lead to aggressive or violent behaviour, although not in everyone all of time."

(i) Report of the Royal Commission on Violence in the Communication Industry (1977) Vol.1, p. 27.

24. There is also considerable evidence that explicit portrayals of sex, either alone or combined with elements of violence, degradation, or dehumanization, can cause a variety of negative effects in its viewers. These effects range from criminal acts such as sexual assault of women and molestation of children to negative changes in attitudes towards women. Current data suggests that a disturbingly large proportion of the male population may be susceptible to these effects.

(i) Respondent's Record, Volume 1.

(ii) Attorney General's Commission On Pornography, Final Report July 1986, U.S. Dept. of Justice, pages 215-234, 299 to 351 and 1957 to 1960.

STANDARDS OF PROPRIETY IN ONTARIO

25. Recent public opinion surveys indicate that Ontario's system of film censorship accurately reflects the standards of propriety of Ontario residents. A large majority of residents are opposed to the exhibition of all of the types of scenes specified in the Regulations. In fact, this data suggests that the standards held by Ontarians may be more restrictive than those embodied in the legislation. For example, most Ontarians are opposed to scenes containing full frontal nudity or profane language, neither of which is prohibited by the Regulations.

(i) Respondent's Record Vol. IV, Tabs H and I.

26. The debates in the Legislative Assembly, the proceedings of the Standing Committee On Administration of Justice and the Exhbits tendered therein when the Theatres Amendment Act was considered, debated and enacted reflect the aforesaid surveys.

(i) Respondent's Record Vol. II, Tab C, Vol III, Tabs D and E.

PART III

POINTS IN ISSUE AND LAW

APPEAL ON FACT

27. It is submitted that this Honourable Court after viewing and considering the film "Amerika" in its entirety and taking into account the general character and integrity of the film cannot but conclude that the Board correctly decided not to approve the film on the grounds that it contains:

(a) the explicit depiction of sexual activity; and

(b) undue emphasis on human genital organs.

(i) The film "Amerika".

28. It is further submitted that an appelate court should not readily interfere with the findings of fact of the Board, a specialized tribunal, unless it is demonstrated that the Board made a "palpable and overriding error" affectings its assessment of the facts.

(i) Lewis v. Todd et al [1980] 2 S.C.R. 694 at 700.

MOOTNESS OF CONSTITUTIONAL ISSUES

29. In the alternative it is submitted if this Honourable Court on viewing the film comes to the conclusion that the film "Amerika" should be approved in its entirety as submitted to the Board then the constitutional and Charter arguments ought not to

This is a practice, not law. Ct. has discretion, & will do so if in pub. interest — circumstances of a demonstrating nature. Not impossible, but unlikely to prevail.

be entertained.

(i) Davis, Canadian Constitutional Law Handbook, 1985, Canada Law Book Inc., pages 578-580.

(ii) Re Maltby et al and Attorney General Sask. et al B.C.C.C. (3d) 308 (Sask. C.A.).

DIVISION OF POWERS

30. It is submitted that the Theatres Act, as amended, is valid provincial legislation in relation to heads 13 and 16 of section 92 of the Constitution Act, 1867.

(i) Re Nova Scotia Board of Censors and McNeil [1978] 2 S.C.R. 662;

(ii) Re Information Retailers Association of Metropolitan Toronto et al (1985) 52 O.R. (2d) 449 (C.A.).

31. The Theatres Act R.S.O. 1980 c. 498 was virtually identical in all material respects to the Theatres and Amusements Act R.S.N.S. 1967 c. 304 which was upheld as validly enacted provincial legislation in the McNeil case. The Theatres Amendment Act S.O. 1984 c. 56 has not changed the applicability of the McNeil case to the Ontario legislation. The addition of specific criteria in Ontario Regulation 56/85 has not changed the pith and substance of the Ontario Act, which remains the regulation of the business of exhibiting and distributing films within the province in accordance with local standards of morality.

(i) McNeil, supra.

32. In the McNeil case, Ritchie J. acknowledged that the decision of the Nova Scoita Amusements Regulation Board was made on moral grounds. He was nevertheless satisfied that "the Board is clothed with authority to fix its own local standards of morality in deciding whether a film is to be rejected or not for local viewing".

> "I share the opinion expressed in [a passage from the P.A.T.A. case] that morality and criminality are far from coextensive and it follows in my view that legislation which authorizes the establishment and enforcement of a local standard of morality in the exhibition of films is not necessarily 'an invasion of the federal criminal field' as Chief Justice MacKeigan thought it to be in this case."

(i) McNeil, supra. pp. 690 and 692.

33. The applicant's assertion that the criteria set out in O.Reg. 56/85 "make clear the moral purpose of the censorship provisions" therefore does not affect the applicability of the McNeil case to the present facts.

(i) Re Information Retailers Association of Metropolitan Toronto, et al, supra.

34. In view of the connection between the viewing of violent, sexually explicit, or dehumanizing materials and the commission of violent or sexual crimes, the impugned legislation is also supportable as being directed at the prevention of crime.

Such a purpose is intra vires the province.

(i) Bedard v. Dawson[1923] SCR 681

(ii) McNeil, supra. at p.692

(iii) A.G. (Canada and Dupond v. City of Montreal [1978] 2 SCR 770 at pp. 791-792.

35. It is submitted that none of the sections sought to be impugned herein are equivalent to Regulation 32 in issue in McNeil which was struck down as being indistinguishable from section 159(2) of the Criminal Code. Regulation 32 provided that "no theatre owner ... shall permit any indecent or improper performance in his theatre ..." and thus virtually duplicated the provision of the Criminal Code. In the case at bar, the legislation merely prohibits the exhibition or distribution of any film which has not been approved by the Board.

(i) McNeil, supra p. 698.

36. The Province may undoubtedly create offences to enforce legislation which is otherwise within its legislative authority. As long as the creation of the offence is incidental to the primary purpose of the legislation, and the primary purpose is within provincial leglislative authority, it will be valid.

(i) Constitution Act, 1867 section 92(15)

(ii) Hodge v. The Queen (1883) 9 App. Cas.117

(iii) Smith v. The Queen [1960] SCR 776 at 780.

PARAMOUNTCY

7. The doctrine of paramountcy has no application to the legislation sought to be impugned. The doctrine only operates when, as Martland J. said in Smith v. the Queen, "compliance with one law involves breach of the other" or, in other words, where it is impossible to comply with both the provincial and federal laws at once.

(i) Multiple Access Ltd. v. McCutcheon [1982] SCR 161, 138 DLR (3d) 1

(ii) Smith v. the Queen [1960] SCR 776 at 800

(iii) Hogg, P.W.; The Constitutional Law of Canada (2nd ed., 1985) pp. 353-67.

38. The fact that the Criminal Code may, in some instances, fail to prohibit material that offends the criteria in the Theatres Act regulations is of no constitutional consequence.

> "There is in my view, no constitutional barrier preventing the Board from rejecting a film for exhibition in Nova Scotia on the sole ground that it fails to conform to standards of morality which the Board itself has fixed notwithstanding the fact that the film is not offensive to any provision of the Criminal Code; and, equally, there is no constitutional reason why a prosecution cannot be brought under s.163 of the Criminal Code in respect of the exhibition of a film which the Board of Censors has approved as conforming to its standards of propriety".

(i) McNeil, supra at p.693.

THE CHARTER OF RIGHTS

39. It has been determined by the Supreme Court of Canada that

> "the proper approach to the definition of the rights and freedoms guaranteed by the Charter was a purposive one. The meaning of a right or freedom guaranteed by the Charter was to be ascertained by an analysis of the purpose of such a guarantee; it was to be understood, in other words, in the light of the interests it was meant to protect."

(i) R. v. Big M Drug Mart Ltd. [1985] 1 S.C.R. 295 at 344 per Dickson J.

40. The purpose of the freedom of expression guaranteeed by section 2(b) of the Charter has been determined by this Honourable Court to relate to "the expression of ideas and opinions relating to the political and governmental domain of the country". To be included within the meaning of "expression" in section 2(b) the expression must contribute to democratic government by saying something

> "about how people are governed or how they should govern themselves. It [should] relate to government policies or matters of public concern essential to a democratic process".

(i) Re Klein and Law Society of Upper Canada (1985) 50 O.R. (2d) 118 at 161 and 168 per Callaghan, J.

(ii) Re Koumondonros et al and Municipality of Metropolitan Toronto (1984) 45 O.R. (2d) 426 at 435 per Eberle J.

(iii) Grier v. Alberta Optometric Association et al [1985] S5 W.W.R. 436 (Alta. Q.B.)

(iv) R. v. Keegstra (1984) 19 C.C.C. (3d) 254 (Alta. Q.B.)

41. It is submitted that the "expression" referred to in section 2(b) of the Charter does not include the expression of

(a) "a graphic or prolonged scene of violence, torture, crime, cruelty, horror, or human degradation"

(b) "the depiction of the physical abuse or humiliation of human beings for purposes of sexual gratification or as pleasing to the victim"

(c) "a scene where a person who is or is intended to represent a person under the age of sixteen years appears

(i) nude or partially nude in a sexually suggestive context, or

(ii) in a scene of explicit sexual activity"

(d) "the explicit or gratuitous depiction of urination, defecation or vomiting"

(e) "the explicit depiction of sexual activity"

(f) "a scene depicting indignities to the human body in an explicit manner"

(g) "a scene where there is undue emphasis on human genital organs"

(h) "a scene where an animal has been abused in the making of the film".

There is no fundamental freedom to express these. They are not within the ambit of the guarantee of freedom of expression in section 2(b) of the Charter. Therefore the legislation is not inconsistent with the Charter and there is no need to rely on section 1.

42. In the alternative, it is submitted that the impugned

provisions of the Theatres Act as amended, and the Regulations thereunder are reasonable limits on freedom of expression which are prescribed by law and demonstrably justified in a free and democratic society.

43. Almost all Canadian provinces and many other free and democratic countries have legislation similar to that of Ontario.

(i) paragraphs 19 to 22, supra.

44. This Court has previously held that:

"We are satisfied, therefore, that some prior censorship of film is demonstrably justifiable in a free and democratic society".

(i) Re O.F.A.V.A.S. and Ontario Board of Censors, supra at p.590 (Div. Court)

45. In order to pass the test of section 1 of the Charter, it must be shown that there is a sufficiently significant government objective behind the legislation and that the means adopted to achieve it are proportional to the importance of the objective.

(i) R. v. Big M. Drug Mart supra. at p. 352

(ii) R. v. Oakes 65 N.R. 87 (S.C.C.)

46. The censorship provisions of the Theatres Act, as amended, serve several vital government purposes:

(a) the protection of society from violence;

(b) the protection of women and children from sexual assault;

(c) the enforcement of local standards of morality in the film exhibition and distribution industry;

(d) the protection of the dignity of women.

(i) Respondent's Record Vol. III, Tab E, pp. 4099 to 4100.

47. International human rights legislation may be of assistance in demonstrating that the above-noted government objectives are pressing and substantial enough to justify limited restrictions of freedom of expression. The International Covenant on Civil and Political Rights allows limitation of freedom of expression based upon, inter alia, "respect of the rights or reputations of others" and "the protection of ... public ... or of public health or morals". Similarly, the European Convention on Human Rights permits limitations for reasons of "public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others".

(i) United Nations International Covenant on Civil and Political Rights, Article 19

(ii) European Convention on Human Rights, Article 10

(iii) Re Hirt and College of Physicians and Surgeons of B.C.

17 D.L.R. (4th) 472 at 482 (B.C.C.A.)

48. Purposes "(a)" and "(b)" are supported by social science data. Courts have held that violent and degrading forms of pornography cause "social harm" and constitute "a threat to society". It is further submitted the recent psychological evidence indicates that these conclusions should also be applied to pornography which is not violent or degrading but which is sexually explicit.

(i) Report of the Royal Commission on Violence, supra

(ii) Respondent's Record, Vol. I

(iii) Attorney General's Commission on Pornography, supra

(iv) R. v. Wagner (1985) 43 C.R. 318 at 335-6 (Alta Q.B.) Affirmed on other grounds (1986) 43 Alta. L.R. (2d) 204 (Alta. C.A.)

(v) R. v. Red Hot Video (1985) 18 C.C.C. (3d) 1 at 22 (B.C.C.A.)

49. Purpose "(d)" in relation to film is integral to the provision of equality and equal protection of the law guaranteed to woman by section 15 of the Charter. Some forms of pornography have been found by the courts to portray women in a degrading and dehumanizing way. Control of such material is justified as protection of human dignity and equality. As was stated by Anderson, J.A.:

"If true equality between male and female persons is to be

achieved it would be quite wrong in my opinion to ignore the threat to equality resulting from the exposure to male audiences of the violent and degrading material described above. As I have said, such material has a tendency to make men more tolerant of violence to women and creates a social climate encouraging men to act in a callous and discriminatory way towards women."

(i) R. v. Red Hot Video Ltd. supra at p. 23 per Anderson J.A.

(ii) R. v. Doug Rankin Co. Ltd. et al (1983) 36 C.R. (3d) 154 at p. 170

(iii) R. v. Wagner supra (Alta. Q.B.) at p. 331.

50. Such protection is not without precedent in Canadian law. The hate propaganda provisions of the Criminal Code protect members of certain identifiable groups from communications which promote hatred against them. Similarly, section 14(1) of the Saskatchewan Human Rights Code protects various groups against any "notice, sign, symbol, emblem, or other representation ... which exposes, or tends to expose, to hatred, ridicules, belittles, or otherwise affronts [their] dignity". Both of these laws have been upheld in response to challenges under s.2(b) of the Charter.

(i) R. v. Keegstra supra, page 268 — how was proportional

(ii) Saskatchewan Human Rights Commission v. Waldo et al (1984) 5 C.H.R.R. D/2074 (Board of Inquiry) at paragraphs 17638-17663

51. It is submitted that the means chosen to accomplish the objectives discussed above are "proportional" to the objectives

as required by the Big M Drug Mart and the Oakes cases. The means and objectives are "rationally connected" in that the criteria of censorship are designed to prevent dangerous behaviour, reflect local standards of morality, and protect the dignity and equality of women. The means go no further than is necessary; the Lieutenant Governor in Council has framed the criteria as specifically and narrowly as is possible without compromising the important aims of the legislation. This conclusion is supported by a comparison with Australia, where the Commonwealth Film Censorship Board may ban films that "depict any matter, the exhibition of which is undesirable in the public interest".

(i) O. Reg. 56/85 s.21

(ii) Report of the Special Committee on Pornography and Prostitution at pp.235-6

(iii) R. v. Big M Drug Mart, supra

(iv) R. v. Oakes, supra

52. The test of "proportionality" as set out in Oakes also involves the balancing of the importance of the government objectives against the "deleterious effects of a measure". It is submitted that the limited types of expression which are subject to restraint under the Theatres Act are of such slight social value as ideas that their benefits are clearly outweighed by the social interest in equality, dignity of the person, order and morality. Such reasoning was used by the United States Supreme

Court in deciding that obscenity was not protected by the First Amendment.

(i) R. v. Oakes, supra

(ii) Lockhart and others, Constitutional Law Cases, Comments, Questions 5th ed. (1980) pages 869-870.

PART IV

ORDER SOUGHT

53. It is submitted that for the aforesaid reasons both the appeal and application for judicial review be dismissed with costs.

DATED at Toronto, this 10th day of September, 1986.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Julian Polika

S. Mason per JP.
Stephen Mason

Of counsel for the Respondent The Ontario Film Review Board

K

POST-FAX EQUIPMENT
MONTREAL H1J 1S3
CR 213

No. 409/85

SUPREME COURT OF ONTARIO

(DIVISIONAL COURT)

IN THE MATTER OF The Theatres Act, R.S.O. 1980, c. 498, as amended S.O. 1984, c. 56;

AND IN THE MATTER OF The Judicial Review Procedure Act, R.S.O. 1980, c. 224;

AND IN THE MATTER OF The Constitution Act, 1981 (Canada);

AND IN THE MATTER OF The Constitutional Questions Act, R.S.O. 1980, c. 86

AND IN THE MATTER OF a certain application to the Ontario Film Review Board appointed under The Theatres Act;

B E T W E E N:

ONTARIO FILM AND VIDEO APPRECIATION SOCIETY

Applicant

- and -

ONTARIO FILM REVIEW BOARD

Respondent

FACTUM OF THE INTERVENANT, MOTION PICTURES THEATRES ASSOCIATION OF ONTARIO

I - NATURE OF THE INTERVENTION

1. This is an intervention in the within application by the Motion Pictures Theatres Association of Ontario ("this

Intervenant"). The Intervenant will argue that Sections 3(5)(a), 3(5)(b) and 35 of the Theatres Act, R.S.O. 1980, c. 498, as amended by S.O. 1984, c. 56, and Section 21 of Regulation 931, R.R.O. 1980, as amended by O. Reg. 61/85 (hereinafter referred to collectively as the "film approval provisions") are of no force and effect and ultra vires as being in conflict with the Canadian Charter of Rights and Freedoms (the "Charter").

II - FACTS

2. This Intervenant accepts as correct the facts stated in the Factum of the Applicant and adds the following facts with respect to the issue of the constitutionality of the film approval provisions.

3. As a result of the commercial realities of the motion picture industry, motion pictures are generally received for submission to the Respondent pursuant to the film approval provisions two to four weeks in advance of the scheduled release date for the motion picture. The release date of a commercial motion picture will generally be scheduled far in advance to enable the scheduling of the necessary publicity campaign for the motion picture. If a motion picture cannot be released on its scheduled release date in a particular market such as Ontario, the benefit

of the co-ordinated publicity campaign will be dissipated and it may not be financially viable to exhibit the film at a later time.

Affidavit of Andrew Emilio, sworn on September 5th, 1986, Intervenant's Motion Record, Tab 2, Pages 4 to 6, Paragraphs 7 to 12.

4. The current procedure established by the film approval provisions ensures that for commercial films, the decision of the Respondent is final since the appeal to the Divisional Court provided for in Section 35(8) of the Theatres Act could not be heard before the financial potential of the motion picture in question would be seriously diminished or completely eliminated.

Affidavit of Andrew Emilio, sworn on September 5th, 1986, Intervenant's Motion Record, Tab 2, Pages 7 to 8, Paragraphs 15 and 17.

5. Experienced film bookers in the industry find it most difficult to determine in advance with any degree of certainty whether certain films will be approved by the Respondent in its application of the criteria set out in Section 21 of Regulation 931. The Respondent does not refuse to approve all films which contain scenes which fall within the categories set out in

Section 21. However, the exact criteria actually applied by the Respondent are not set out in the film approval provisions or elsewhere.

Affidavit of Andrew Emilio, sworn on September 5th, 1986, Intervenant's Motion Record, Tab 2, Pages 8 to 11, Paragraphs 17 to 18.

6. The Respondent's decisions made pursuant to the film approval provisions are inconsistent with decisions made by other Provincial censorship agencies which purport to apply similar standards, are inconsistent with its own prior decisions concerning motion pictures dealing with similar themes, and are inconsistent with its own decisions regarding the same motion picture on previous screenings.

Affidavit of Andrew Emilio, sworn on September 5th, 1986, Intervenant's Motion Record, Tab 2, Pages 11 to 13, Paragraph 19.

III - ISSUES AND LAW

ISSUE #1

Are the film approval provisions a violation of the fundamental freedom of expression guaranteed by Section 2(b) of the Charter?

7. The film approval provisions are a *prima facie* infringement on the fundamental freedom of expression guaranteed by

Section 2(b) of the Charter, in that the film approval provisions authorize the Respondent to prohibit the public exhibition of motion pictures in Ontario. Motion pictures are a critically important medium of expression, and the protection of Section 2(b) of the Charter extends to all motion pictures, whether or not produced for commercial gain, distribution or exhibition.

Re Ontario Film and Video Appreciation Society and Ontario Board of Censors (1983), 41 O.R. (2d) 583 (Div. Ct.), aff'd (1984) 45 O.R. (2d) 80 (C.A.)

ISSUE #2

Can the film approval provisions be justified pursuant to Section 1 of the Charter?

8. Once a violation of the freedom of expression guaranteed by Section 2(b) of the Charter is shown, then the burden of satisfying Section 1 of the Charter falls upon the party, in this case the Respondent, which seeks to uphold the validity of the legislation in question. This evidentiary burden is on the balance of probabilities and will be stringently applied where, as here, a fundamental freedom is being infringed.

Regina v. Oakes (1986), 24 C.C.C. (3d) 321 (S.C.C.)

Re Public Service Alliance of Canada and the Queen in Right of Canada (1984), 11 D.L.R. (4th) 387 (F.C.T.D.)

9. In order to meet the evidentiary burden imposed by Section 1 of the Charter, the Respondent must prove:

a) that the objective of the film approval provisions is of sufficient importance to justify the infringement of a fundamental freedom guaranteed by the Charter; and

b) that the means chosen by the government through the enactment of the film approval provisions is reasonable and demonstrably justified.

Regina v. Oakes, supra

10. In order to satisfy the first test set out above, an intra vires legislative objective must be proven along with sufficient evidence of the importance of this objective to justify an infringement upon a fundamental freedom guaranteed by the Charter.

Regina v. Oakes, supra

Regina v. Big M Drug Mart Ltd. (1983), 5 D.L.R. (4th) 121 (Alta. C.A.), aff'd [1985] 1 S.C.R. 295

11. In order to satisfy the second test set out above, the Respondent must show that the film approval provisions satisfy

the "proportionality test", which test requires that the legislation in question:

(a) be designed to achieve the stated objective of the legislation and be rationally connected to this objective,

(b) impair the fundamental freedom guaranteed by the Charter as little as possible while achieving the objective of the legislation, and

(c) limit the fundamental freedom guaranteed by the Charter in a manner proportionally less than the relative importance to society of the objective of the legislation or the extent to which that objective is achieved by the legislation in question.

Evidence of the economic effect of the infringement of the fundamental freedom guaranteed by the Charter on individuals or corporations is relevant to the test of proportionality set out above.

Regina v. Oakes, supra

Re Public Service Alliance of Canada, supra

12. In assessing the applicability of Section 1 of the Charter, the Court must be presented with cogent and persuasive evidence concerning the rationale and objective of the legislation, the importance and urgency of the stated objective, com-

parable legislation in other Canadian and foreign jurisdictions and evidence of alternative methods of achieving the stated objective of the legislation.

Regina v. Oakes, supra

Regina v. Bryant (1984), 48 O.R. (2d) 732 (C.A.)

Re Regina and Videoflicks Ltd. (1984), 48 O.R. (2d) 395 (C.A.)

Regina v. Southam Inc. (1983), 41 O.R. (2d) 113 (C.A.)

Regina v. S.B. (1982), 146 D.L.R. (3d) 69 (B.C.S.C.)

13. The Respondent has not satisfied any of the requirements of Section 1 of the Charter so as to justify the validity of the film approval provisions.

a) no sufficiently important intra vires objective has been proven for the film approval provisions

14. Here, the Respondent is required to prove that the film approval provisions have an intra vires objective which is sufficiently important to justify the infringement of the fundamental freedom of expression guaranteed by Section 2(b) of the Charter.

Regina v. Oakes, supra

Regina v. Big M Drug Mart Ltd., supra

15. A Provincial legislature may only enact film censorship or approval legislation as a regulation of local morality or as a regulation of business within the Province.

Nova Scotia Board of Censors v. McNeil, [1978] 2 S.C.R. 662

16. The Respondent has failed completely to prove that the film approval provisions have any intra vires objective. The content of the film approval provisions, and in particular, the criteria enumerated in Section 21 of Regulation 931, make it clear that the objective of the film approval provisions is the regulation of morality rather than the regulation of business. All public exhibitions of motion pictures are caught within the scope of the approval power granted to the Respondent, which power is not limited to those motion pictures which are to be exhibited by a business entity or for an admission fee.

17. The film approval provisions do not have as their objective the regulation of local morality. There is no evidence that this is the objective of the film approval provisions, and nothing in the film approval provisions authorizes or requires the Board to apply any local standards of morality.

18. The Respondent has not proven that any of the alleged objectives of the film approval provisions are so important as to justify the infringement of a fundamental freedom guaranteed by

Section 2(b) of the Charter. In order to satisfy the onus imposed by Section 1 of the Charter, the Respondent must show that the objective of the film approval provisions relate "to concerns which are pressing and substantial" and must further demonstrate a clear and present danger of harm to a societal value which justifies the limitation on freedom of expression.

Regina v. Oakes, supra

National Citizens' Coalition Inc. v. Attorney General for Canada (1984), 11 D.L.R. (4th) 481 (Alta. Q.B.)

Beckton, "Freedom of Expression" in Tarnapolsky and Beaudoin, "The Canadian Charter of Rights and Freedoms, Commentary" (1982)

19. In order to justify an infringement of a fundamental freedom guaranteed by Section 2(b) of the Charter, the objective of the legislation in question must be to prevent a clear and present danger of substantial harm to the community. It is not sufficient justification that certain expression may be distasteful or morally offensive to some members of the community.

Regina v. Oakes, supra

Regina v. Red Hot Video (1985), 18 C.C.C. (3d) 1 (B.C.C.A.)

Re Information Retailers of Metropolitan Toronto Inc. and Municipality of Metropolitan Toronto (1985), 22 D.L.R. (4th) 161 (O.C.A.)

20. The regulation of obscenity based on a national community standard is accomplished in Canada through the criminal law enacted by the Federal Parliament. There is no sufficiently important objective of the film approval provisions which is not already satisfied by the criminal law, and, in particular, it has not been proven that a prior restraint censorship system for motion pictures is required in addition to the criminal sanctions imposed by the Federal Parliament.

Criminal Code, Sections 159 and 160

b) the film approval provisions are overly broad and infringe upon freedom of expression to a greater degree than is required to accomplish the stated objective of the legislation

21. In the event that the film approval provisions do have an objective of sufficient importance to justify infringing on the fundamental freedom of expression guaranteed by Section 2(b) of the Charter, then the means employed to accomplish the objective must infringe "as little as possible" on that freedom; the means and the legislation will otherwise not be reasonable within the meaning of Section 1 of the Charter.

Regina v. Oakes, supra

Regina v. Big M Drug Mart Ltd., supra

22. The limits on freedom of expression imposed by the film approval provisions go far beyond what is required to address the alleged objectives of the legislation. There is no clear and present danger of any harm to society which calls for a prohibition on the public exhibition of all films containing scenes falling within the categories enumerated in Section 21 of Regulation 931. It is immaterial whether a lesser prohibition on public exhibition could be justified since the legislation in question is overly broad in its limitation on freedom of expression. The Court should not "read down" legislation which is in conflict with the Charter in order to limit the scope of the prohibition imposed by the legislation.

Regina v. Oakes, supra

Re Information Retailers of Metropolitan Toronto, supra

Regina v. Red Hot Video, supra

Regina v. Carriere (1983), 32 C.R. (3d) 117 (Ont. Prov. Ct.)

Hunter v. Southam Inc. (1984), 11 D.L.R. (4th) 641 (S.C.C.)

c) the film approval provisions do not provide for adequate procedural safeguards against arbitrary administrative infringement on freedom of expression and are therefore not reasonable and proportional

23. A prior restraint censorship system such as that created by the film approval provisions is not reasonable within the meaning of Section 1 of the Charter since there is no evidence

that a single showing of any motion picture creates a clear and present danger to society. The criminal law obscenity provisions which allow for the seizure of obscene films and the imposition of heavy fines or a term of imprisonment for a person convicted of possessing or exhibiting obscene materials are sufficient to deal with any danger to society which might arise from obscene motion pictures.

Criminal Code, Sections 159 and 160

24. Section 3(9) of the Theatres Act specifically exempts the Respondent's decisions from the application of Part I of the Statutory Powers Procedures Act, R.S.O. 1980, c. 484, which Part provides for certain procedural guarantees such as the right to a hearing. A procedure of prior restraint of freedom of expression such as that established by the film approval process which does not permit the person applying for approval to make submissions to the decision-making body cannot be a reasonable restraint on freedom of expression within the meaning of Section 1 of the Charter.

25. A system of prior restraint of freedom of expression which does not permit a prompt judicial determination on the issue of whether a motion picture should be permitted to be exhibited does not satisfy the test set out in Section 1 of the Charter. The film approval provisions provide for a judicial

appeal which is so commercially unrealistic as to ensure that the decision of the Respondent is final; the film approval provisions are accordingly not reasonable within the meaning of Section 1 of the Charter.

Freedman v. Maryland (1965), 380 U.S. 51

Teitel Film Corporation v. Cusack (1968), 390 U.S. 139

26. A procedure of prior restraint of freedom of expression which places the onus on the citizen seeking approval to obtain such approval by way of a judicial appeal of an administrative decision cannot be a reasonable restaint on freedom of expression within the meaning of Section 1 of the Charter. Such a procedure allows an order preventing public exhibition of a motion picture before any judicial determination that the motion picture in question should be so restricted, and places no burden on the State to justify its limitation on the citizen's freedom of expression. Such a procedure encourages the expansion of administrative limits on freedom of expression without guaranteeing the procedural safeguards necessary to ensure that such limitations are properly applied. In order to be reasonable within the meaning of Section 1 of the Charter, a prior restraint system such as that imposed by the film approval provisions must allow

for a prompt judicial determination after a hearing where the onus of justifying the need for the specific limitation on freedom of expression rests upon the State.

Freedman v. Maryland, supra

Teitel Film Corporation, supra

Hunter v. Southam Inc., supra

d) **the film approval provisions are not reasonable and "prescribed by law" because they are too vague**

27. In order to satisfy Section 1 of the Charter, any limitation on freedom of expression must be "a reasonable limitation prescribed by law"; the limitation set out in the legislation must therefore be precise and certain such that a person can determine with a reasonable degree of certainty what it is that is being permitted by the legislation.

Re Ontario Film and Video Society, supra

Re Information Retailers of Metropolitan Toronto, supra

Re Luscher and Deputy Minister, Revenue Canada, Customs and Excise (1985), 17 D.L.R. (4th) 503 (F.C.A.)

Re: Hamilton Independent Variety and Confectionary Stores Inc. and City of Hamilton (1983), 143 D.L.R. (3d) 498 (O.C.A.)

28. The limitations on freedom of expression imposed by the film approval provisions are too vague and uncertain to qualify as "reasonable limits prescribed by law".

29. The categories set out in Section 21 of Regulation 931 cannot be consistently applied by experienced motion picture industry bookers, and the Respondent itself is inconsistent in its application of the vague categories between screening of the same motion picture. In addition, the film approval provisions specify no threshold standard of any kind for the acceptance or rejection of a motion picture for exhibition in Ontario, but merely provide that the Respondent "may" refuse approval of a motion picture if it contains scenes meeting one or more of the criteria enumerated is Section 21 of Regulation 931. Since it is clear that the Respondent does not refuse approval to all motion pictures meeting the terms of the wide criteria set out in Section 21, the Respondent must therefore be applying some other standard not contained explicitly in the film approval provisions, which standard is therefore not "prescribed by law".

IV - ORDER REQUESTED

This Intervenant requests a declaration pursuant to Section 52(1) of the Canadian Charter of Rights and Freedoms that Sections 3(5)(a), 3(5)(b) and 35 of the Theatres Act, R.S.O. 1980, c. 498, as amended by S.O. 1984, c. 56 and Section 21 of Regulation 931 R.R.O. 1980, as amended by O.Reg. 61/85 are all of no force and effect and ultra vires as being in conflict with Section 2(b) of the Canadian Charter of Rights and Freedoms.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Ronald J. Rolls

Mark S. Hayes

of counsel for the Intervenant
Motion Pictures Theatres
Association of Ontario

SCHEDULE "A"

1. Re Ontario Film and Video Appreciation Society and Ontario Board of Censors (1983), 41 O.R. (2d) 583 (Div. Ct.), aff'd (1984) 45 O.R. (2d) 80 (C.A.)

2. Regina v. Oakes (1986), 24 C.C.C. (3d) 321 (S.C.C.)

3. Re Public Service Alliance of Canada and the Queen in Right of Canada (1984), 11 D.L.R. (4th) 387 (F.C.T.D.)

4. Regina v. Big M Drug Mart Ltd. (1983), 5 D.L.R. (4th) 121 (Alta. C.A.), aff'd [1985] 1 S.C.R. 295

5. Regina v. Bryant (1984), 48 O.R. (2d) 732 (C.A.)

6. Re Regina and Videoflicks Ltd. (1984), 48 O.R. (2d) 395 (C.A.)

7. Regina v. Southam Inc. (1983), 41 O.R. (2d) 113 (C.A.)

8. Regina v. S.B. (1982), 146 D.L.R. (3d) 69 (B.C.S.C.)

9. Nova Scotia Board of Censors v. McNeil, [1978] 2 S.C.R. 662

10. National Citizens' Coalition Inc. v. Attorney General of Canada (1984), 11 D.L.R. (4th) 481 (Alta. Q.B.)

11. Beckton, "Freedom of Expression" in Tarnapolsky and Beaudon, "The Canadian Charter of Rights and Freedoms, Commentary" (1982)

12. Regina v. Red Hot Video (1985), 18 C.C.C. (3d) 1 (B.C.C.A.)

13. Re Information Retailers of Metropolitan Toronto Inc. and Municipality of Metropolitan Toronto (1985), 22 D.L.R. (4th) 161 (O.C.A.)

14. Regina v. Carriere (1983), 32 C.R. (3d) 117 (Ont. Prov. Ct.)

15. Hunter v. Southam Inc. (1984), 11 D.L.R. (4th) 641 (S.C.C.)

16. Freedman v. Maryland (1965), 380 U.S. 51

17. Teitel Film Corporation v. Cusack (1968), 390 U.S. 139

19. Re Luscher and Deputy Minister, Revenue Canada, Customs and Excise (1985), 17 D.L.R. (4th) 503 (F.C.A.)

20. Re Hamilton Independent Variety and Confectionary Stores Inc. and City of Hamilton (1983), 143 D.L.R. (3d) 498 (O.C.A.)

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NO. 498/85

SUPREME COURT OF ONTARIO
(DIVISIONAL COURT)

IN THE MATTER OF The Theatres Act, R.S.O. 1980, c. 498, as amended S.O. 1984, c. 56;

AND IN THE MATTER OF The Judicial Review Procedure Act, R.S.O. 1980, c. 224;

AND IN THE MATTER OF the Constitution Act, 1981 (Canada);

AND IN THE MATTER OF the Constitutional Questions Act, R.S.O. 1980, c. 86;

AND IN THE MATTER OF a certain application to the Ontario Film Review Board appointed under The Theatres Act;

B E T W E E N:

ONTARIO FILM AND VIDEO APPRECIATION SOCIETY

Applicant

- and -

ONTARIO FILM REVIEW BOARD

Respondent

A F F I D A V I T

I, ANDREW EMILIO, of the City of Toronto, in the Municipality of Metropolitan Toronto, MAKE OATH AND SAY:

1. This is an affidavit sworn in support of the proposed intervention by the Motion Pictures Theatres Association of Ontario (the "Association") in this application, and in support

of the Association's arguments with respect to the constitutionality of the film approval provisions contained in the Theatres Act and related regulations.

2. The Association is an incorporated association which has represented the interests of theatre owners in Ontario since 1943. The Association was incorporated by letters patent on April 1, 1943 and is Ontario Corporation #0048428. The members of the Association own and operate over 95% of the motion picture theatres in Ontario, and some of the members of the Association, such as Cineplex, are also involved in distributing motion pictures. The Association acts as a voice for motion picture theatre owners in all matters of interest to its members. The members of the Association deal with the Respondent Ontario Film Review Board (the "Board") and its rulings more than any other single identifiable group in Ontario, and the members of the Association are directly affected by the Board's rulings every day.

3. I am the Vice-President of Cineplex Odeon Films, the Canadian distribution division of Cineplex Odeon Corporation ("Cineplex"), one of the members of the Association. In the course of my duties, I am responsible for contracting for the purchase of the Canadian distribution rights for all of the films distributed by Cineplex, for arranging for the approval of these

films by provincial approval agencies such as the Board, and for co-ordinating the release of all Cineplex films with the appropriate advertising and media campaigns so as to ensure maximum exposure for all of Cineplex' films upon their release. I have personal knowledge of the matters sworn to in the remainder of this affidavit.

4. Cineplex is a major distributor of films in Ontario and Canada, and distributes approximately 40-50 films per year. In addition, Cineplex is a major exhibitor of films in Ontario.

5. Each of the films distributed by Cineplex in Ontario is submitted to the Board by Cineplex for approval, and as a result, I have had extensive dealings with the Board and with the approval process.

6. The current system of approving films in Ontario, as set out in the Theatres Act and the related regulations, and as applied by the Board, is arbitrary, inconsistent and unaccountable. The current approval system inhibits free expression and free circulation of films and unnecessarily puts controls on commercial films which are not restricted in any way anywhere else in Canada or in the United States.

PROCEDURE

7. Motion pictures today are very expensive to produce, with most costing in the millions of dollars. As a result, relatively large audiences and box office receipts are required for a commercial film producer to recover its production costs for a specific film. If the producer is unable to break even or make a profit on the film, he may be unable to obtain financial backing for future films. In this way, commercial considerations impact very strongly on the ability of film makers to engage in free expression in their chosen art form.

8. In order to attempt to obtain the necessary audiences for their films, producers and distributors must co-ordinate advertising campaigns which are undertaken to publicize the release of these films. As with film production, film promotion and advertising is a very expensive activity, and North American campaigns for major films can cost millions of dollars. These campaigns may involve television, radio, magazine, billboard and newspaper advertising, as well as other types of promotions such as tours and numerous interviews by the performers and others involved in making a film.

9. In order to minimize advertising expenditures and maximize advertising effect, the producer and distributor of the

film will generally co-ordinate the film promotion campaign and the release of the film simultaneously across all major North American markets. One of the necessary pre-requisites for such co-ordination is th ability to release a particular film in all major markets at about the same time. Ontario, and in particular Toronto, is a major North American film market.

10. A distributor will generally purchase the rights to a film for the whole of Canada. This purchase must be made at a price based on the distributor's opinion of the potential income which will be generated by the film from distribution across Canada. Ontario is by far Canada's largest movie-going market. If a distributor is unsure whether a specific film will be approved by the Board, it may be unable to assess the worth of th film and in some cases, will not acquire the rights to the film for that reason.

11. The high cost of film production also dictates that in most cases a film will be released soon after it is completed so that the producer can begin to recoup its expenses as quickly as possible. As a result, the distributor of a film will usually receive the final version of any film approximately two to four weeks before the scheduled release date of the film. Therefore, a film will generally be provided to the Board for approval two to four weeks before it is scheduled to be released throughout

major North American markets, and after the promotional campaign mentioned earlier has been arranged and generally commenced.

12. Should there be a delay in the release of the film in one market for a significant time beyond the co-ordinated general release date for the film, most of the initial publicity surrounding the film will be dissipated and the income potential of the film will be greatly diminished. In some cases, it would not even be worthwhile to release the film later in the isolated market, because the additional advertising and promotional expenditures which would have to be incurred might exceed the film's income potential in that market.

13. At present, there is no effective right of appeal from decisions of the Board regarding refusals to approve individual films. Section 35(6) of the Theatres Act allows for an appeal of a decision by the Board not to approve a film and a rescreening of the film by a panel of the Board. In general, such a rescreening is accomplished quickly. However, it is my experience that once a decision is made by one panel of the Board to refuse to approve a film, it is unlikely that another panel of the Board will approve the film. Similarly, if one panel of the Board orders cuts to a film as a condition of approval, the panel on appeal will also tend to order cuts, although not necessarily the same cuts.

14. Another difficulty is that the Board does not permit the producer or distributor submitting the film for approval to make any submissions to the Board concerning the film, either before or after the first screening or on an appeal and rescreening. While the Board gives reasons for its refusal to approve a film, these reasons are generally quite vague and usually refer to the words set out in Section 21 of the regulations to the Theatres Act without providing any further clarification.

15. The only other remedy available to a producer or distributor which has submitted a film for which the Board has refused approval is to appeal the Board's finding to the Divisional Court, pursuant to Section 35(8) of the Theatres Act. I am informed by the solicitors for the Association in this application that the current time between the perfection of an application to the Divisional Court and the actual hearing of the application is approximately five to six months. As a result of the realities of the commercial film market as outlined above, such an appeal is not a realistic option for a commercial film distributor.

16. In the circumstances, a commercial film distributor in Ontario has no realistic course of appeal from a decision of the Board. If the Board orders cuts to a film, the distributor will

make the cuts rather than miss the scheduled release date for the film, even if the cuts are significant and unjustified. Similarly, if the film is not approved by the Board for exhibition, the film will simply not be exhibited in Ontario since the distributor has neither the time nor the financial incentive to appeal the Board's decision to the Divisional Court. Therefore, for commercial films, the Board's decision is final.

STANDARDS

17. The standards set out in Section 21 of the regulations to the Theatres Act are so vague that it is impossible to predict whether certain films will or will not be approved by the Board. Most films distributed by Cineplex are reviewed by a panel of experienced film bookers at Cineplex prior to an offer being made for the distribution of the film in Canada. On numerous occasions, the opinions of these experienced panel members have been diametrically opposed on the question of whether the Board will approve a certain film for exhibition in Ontario. I am aware of similar difficulties being encountered by other distributors.

18. The standards set out in Section 21 range from vague to completely meaningless. I have reviewed Section 21 of the

regulations and have these comments based on my experience in dealing with the Board:

a) Section 21 as a whole does not state what the threshold level for approval or rejection of the film should be, but in fact the Board appears to apply a threshold test of whether the film in question exceeds current community standards for sexual activity, violence and so on;

b) the standard in Section 21(2)(g) regarding "undue emphasis on human genital organs" is understood in the film industry to prohibit the showing of either an erect penis or openly exposed female genitalia, although this particular standard is not stated explicitly in the section;

c) the standard set out in Section 21(2)(e) and Section 21(3) is vague. Beyond the true "blue movie" close-up depictions of sexual intercourse, there is no comprehensible dividing line that determines what degree of explicit sexual activity is prohibited, and I have found the Board to be inconsistent in its decisions pursuant to this aspect of the standard;

d) the standard set out in Section 21(2)(a) is virtually meaningless. Taken literally, this standard would prevent the public exhibition of hundreds of films which contain "graphic" scenes of violence and crime.

Obviously, most of these films are approved by the Board. I do not know where the dividing line is between those films which are approved and those which are not, and I have found the Board to be inconsistent in its decisions pursuant to this aspect of the standard;

e) the standard set out in Section 21(2)(c) is relatively clear except for the obvious difficulty in determining whether an actor or actress "is or is intended to represent a person under the age of 16 years". The Board has gone so far as to demand birth certificates for performers before a film could be screened in Ontario. In practice, it is ludicrous to imagine that a distributor can check the actual ages of all performers in a film before contracting for the distribution of that film. In any event, the actual age of the performer is irrelevant provided that their appearance in the film does not lead the viewer to believe that they are under the age specified;

f) I do not know what kind of "indignity" as mentioned in Section 21(2)(f) could be caused to the human body which would not be subsumed in "violence, torture, crime, cruelty, horror or human degradation" in Section 21(2)(a), and therefore I cannot imagine what Section 21(2)(f) could be referring to;

g) the standard set out in Section 21(2)(h) is impossible to apply. I am unable to determine from viewing a completed film whether a particular scene in that film involved the abusing of an animal during the making of the film. I would have to assume that the Board is also unable to make that determination. Film techniques are so advanced today that even experienced observers cannot distinguish between reality and the "special effects" employed by skilled film makers.

19. As a result of the vagueness of the standards in Section 21 of the regulations, the application of the approval standards by the Board is arbitrary and inconsistent. This inconsistency is manifested in three distinct ways:

a) the Board's decisions on individual films are inconsistent with the decisions of other similar Boards in Canada which purport to apply similar standards, such as the provinces of Alberta, Saskatchewan, Newfoundland and the Maritime provinces in that the Board will prevent the exhibition of films approved for exhibition in those provinces;

b) the Board is inconsistent in its treatment of films with similar content in that the Board will reject a film because of its theme while having previously approved several other films dealing more explicitly with the

same theme. A recent example was a film dealing with "suggestions of cannibalism"; and

c) the Board is inconsistent in its treatment of the same film on rescreenings or appeals. Recently, Cineplex submitted a film viewed in four separate screening by the Board. On the first screening, four members of the panel rejected the film altogether, while one member would have approved the film with certain cuts. On a second screening, all five members of the panel rejected the film outright, without even suggesting possible cuts that would allow the approval of the film, even though the version of the film which was resubmitted had been cut in the manner suggested by the minority of the first panel. On the third screening, three members of the panel again agreed that the film should not be approved in any form. Two members of this third panel, both of whom had sat on the first panel and had recommended an outright ban on the film, expressed a minority opinion on the third screening that they would have allowed the film with certain cuts, although each suggested different cuts with a different classification for the film. On a fourth and final screening, the film was approved unanimously with a single cut of seven minutes from a 98-minute film. The glaring inconsistency in these decisions was that the cuts suggested after three

of the four screenings were almost completely different on each of the screenings, and the single cut ~~ordered after~~ made before the final screening did not remove most of the scenes which the previous three panels had indicated contained unacceptable themes or materials. If the Board members themselves had at least four different opinions about the portions of the film which were objectionable, it is impossible to hope that a film producer, distributor or exhibitor could determine in advance which portions of the film might or might not be refused approval for exhibition in Ontario.

20. The current state of the film approval process in Ontario is so uncertain that I am aware of some commercial films which have been shown in jurisdictions all over the world, but were not even submitted for approval in Ontario because of the vagueness, unpredictability and poor reputation of the Board. In the result, these films were never seen publicly in Ontario, and may never be.

REASONS FOR INTERVENTION

21. I personally became aware of this application on or about August 19, 1986, and the Association only approved the launching of its intervention in this application on or about

September 3, 1986. The Association has offered to pay the cost of expediting any transcripts of cross-examinations on this affidavit in order to ensure that there will be no delay in the hearing of the application on September 15, 1986 as a result of its proposed intervention.

22. The members of the Association are each directly affected by the provisions of the Theatres Act and the related regulations which are being challenged in this application.

23. The Applicant, the Ontario Film and Video Appreciation Society, is not a commercial entity and has no interest in the commercial distribution and exhibition of motion pictures in Ontario. The specific film in question, "Amerika", is an "art" film which has never to my knowledge been commercially distributed or exhibited.

24. The commercial film distribution and exhibition industry, and its concerns regarding the constitutionality of the Theatres Act and the related regulations, are not represented in this application by any of the current parties. I believe that the commercial film distribution and exhibition industry should be represented on the hearing of this application, since the industry deals with the Board more than any other group, and since the industry suffers great prejudice, as outlined above, as

a result of the vagueness of the regulations and the inconsistency and unfairness of the film approval process.

SWORN before me at the City of Toronto, in the Municipality of Metropolitan Toronto, this 5TH day of September, 1986.

A COMMISSIONER FOR TAKING AFFIDAVITS

ANDREW EMILIO

Sept. 18

Polekia

Refers to Somers's admin law re vagueness bylaws p68-69.

Info Retailers — admin & say bylaw vague as matter of interp. —

Legs. of prov. isn't open to some take.

Isn't talking @ this re s.1

Refers to Arcade amusement in which bylaw is prohib. in form — & is still constitutional.

~~Youth~~ — not total prohibition

Same as McNeil — local standards, youth, & prevention of crime

Leaving aside s.32 in McNeil — which is straight prohibition — not its OK.

Not prohibition — shown film which hasn't been approved.

McNeil suggests you could leave it to which to make moral judgments. Def = no standards

R31 — no attempt to deal w obscenity, etc.

Nordic – deals w/ a prohibition.
Imp. Retailers + Roumanians
are culmination of digression
bec. of nudity cases.

* Object = local standards of
morality + prevention of
crime.
Stuff from Hansard + Sep. debates
tendered to show purpose.
Imp. that this isn't outdated
purpose – passed for that reason.

Politics sep. even if no CC
provision (1), prov. can't
legis. w/ nudity in rest.

S.12 – Nothing ‖ to C.C.
provision – are specific
criteria designed to
local standards in prov.

S.61 – in place when McNeil
in place. Prov. can create
penalties w/ legis. w/ other
valid purposes.

→ local +
private matters

– How can say
$\boxed{\text{local}}$ problem

– How can say this
not ‖ to CC +
yet assess com.
standards + prevention
of crime are purpose? –
that's test for
obscenity?

Paramountcy

Valid prov. + fed. legis, then principle applied. — impossible to comply w/ both.

P. 23 — Mult. access.

"One says yes, other no."

Operations conflict — forced to do something in prov., which is conflict w/ CC. Can't force to show film.

* OK by Bd. isn't pre-clearance — standards aren't same as CC. — are def. + reflect local concerns.

If these standards are def., then how can com. tolerance be just? Where is lowerance than Dot. is def. in the report?

Charter

Isn't clear that this expression is covered by Charter — things have changed since ~~Begin~~ BFAVAS #1

Begin — purposive approach — in light of interests to cover means the protect.

If one is to have as stress a rule re s.1 as in Oakes, must be same matter is covered by right.

He says just pol. + gov. process + most contribute to gov. process

2 approaches

1) Exp. Complete route - Anything in - tutions - Info Retailers, p 468

He has made 1 exception - non obscene expression.

But Resp says that R. 21 adjust deal to obscene results.

?

Police assists that each state can assess own standards of morality in crim. law in U.S.

Davis - Const. law - ref. to Dickson's lecture in Resid. Tenancies -

True U.S. defers freedom by letting them assess tow weights of [illegible], etc. - Ref. to Klein -

(2) purposive approach

Examine:
- What's in issue
- " Beg addressed
- How address - + what expression is being contacted.

Kolemodowski – D.W. Co. –
Eberle – p. 435

Dice Oaks say – who's interest in pretty drug dealers?

Not Okeo by C.A. Tefs open

Klein – p. 160, 161.
Notes that he leaves aside ques. of whether artistic expression falls w/in 2b. – Is in C.A., not yet heard.
Also, p. 168.

Re Sees – not explored.

Fitzpatrick – Re Imp Retailers – his view is obscene adults books are corrupt.

Keeyton – Hatred s. of CC doesn't infringe freedom of expression – there is an appeal pending –
p. 2, 261 (he says this is easy route).
p. 266 + 267 – Can conceptual freedom of expression doesn't go to promote hatred.

Keeping rights to s. 15 + s. 28 — they guarantee rights to make female persons — + is imp. that in all material women are portrayed as unequal.

↓

268 Wins s. 15 + s. 28 (multi-cul.), combines s. 281 ... infringe freedom of expression that promotes it.

When you look at particular prohibitions, not film-only restrictions + partic. grounds of restriction —

↓

(+) look at purpose of 2(b) — pol. + gov. expression.

Can there be a fund. freedom to express what is in s. 21(2)

Si What is imp. of s. 28?
Bioscopes = charts
enforce = ... ser. sets.

Not all material → degrading women.

What was nos of dissem in Bej M? There no clear exercise of religion — but complicated.
K Freedom of expression = rights to have access to newspapers.

S. 1 arguments

— Cr. has already decided that prior restraint justified to some extent

Suggest you're bound by OTAVAS 1 in some respects not others.

— Facts
not 1 becomes determination of issue — just factor to be considered.

— Statute in place since 1911
— Is specific board which bipartisan reg., + decisions open to public.
— Emilio — sculptor "arbitrary" means you can't get to Dw. Cr. soon enough — & it's clear he has a econ. purpose
— Inconsistent? In P.T.A's Sup. Ct., Bd's reports, Tab 4

Pre-charts restraints don't justify anything.

↓

— 3 films submitted + middle one went through appeal process
— Shows process speed
— This supplies has no problem dealing w/ Censor

Emilio's off, p.12 – Wasn't a cut, just the submitted in def. version.

Isn't inconsistent except with def. members of panel. Eventually you'll get there + fundamental when they OK.

Isn't this imp.?

Xam of Emilio –
p. 249, Q. 220, 221.
Arbitrary – Don't agree in interim? Yes.

Inconsistent – 2 bds. comm to def. decision – yes

– Isn't this imp.

– Artistic concerns aren't imp. to him.
He wants not. Standards bec. it's easier in dist.

So what?

– Ref. to Roth, V.III TAB D P.19 at end – Distribution think that the system works OK

– What was they purpose Wlong? Video insert.

– Tab F – V.III – Cam films not rejected – only from U.S. Hong Kong – the shows Canadians know

Own standards of morality. - not U.S., etc. Can we say we should let all films in, even if aren't conform to our body.

We don't have a film industry.

Table - Elem. reports - these films are essentially foreign - made films, so what is being assured is foreign, not Canadian films.

We will register + aren't in 85 report.

Comparative - Other prov. cens films & usually by Bd. or trib. - we are 1st to specify criteria.

- Manitoba doesn't

- Other countries do or don't.

- U.S.
- Videofleet

- "Problem" is an issue not unknown throughout free world - & administered + dealt to in diff. ways. -

So how can it be a local problem

Rep. Shld. have opp. to rep. to matters raised for 15 time in submission of other counsel.
→ 5:30; + then recommence at 9:30.

SOCIAL SCIENCE DATA

Check affidavit - affect to show not much wt. to be placed on W.P.A.B. Say take into account date of pub. of paper — U.S. DOC [illegible] not available.

Same as Domestic 187 book!

— Terms are def. used.

— ~~U.S. Air Force~~ Violence in Communist Group.

Tab 5 — Not dispute there violence can cause

~~Sex bank & [illegible]~~

~~Stress~~ Idea is negative attitude to women. — eg., S. 38 of Chart.

Desensitization → you're exposed to it, less awful seems.

If unions weren't rotated, then there are values which they brought to board cold vanish.

Isn't single exposure — but if is a massive exposure then society will change!

* Not directed to direct capacity — subtle, the changes which will result in society as a whole — to preserve our local standards of morality.

Read Marshall affidavit

#11 Zellman — ex. + lowers sex = change in reg. attitudes.

* Isn't direct causal connection bet. harm + pom — but does show a gradual change in attitudes

Reversal is of deficient.

Local standards — to marriage, fidelity, fam. unit + promiscuity.

What's reason we're worried by:
- Ex. sex
- Lessons on all

Hicklin → Alcohol test

Lower to Marshall's "withheld man"

→ Only Zellman

— Not direct, indirect — not any!

→ Stay reasons our attitudes

- Refer parts to Ex. I
Marshall's report itself.

- 917 is very important to
this case.

918 : 937.
$

- If you couple his conclusions
w/ insidious harm — creep
moral corruption — which I
portrayed to you —
then this shows
government's interest in this.

- U.S. Ab's report —
- Sex. Ex. Staff —
harm can result even
if not → bad attitudes to women

We wish to uphold sex w/
"manage low-tonnement
affection".
↓
This upholds local standards
of morality.

- Onus is on
you
-

Is he suggest
we are able to
~~[illegible]~~ acting
which don't
promote
manage.

- Standards of property in Ont.

- If took survey or force value, reg reflect local moral standards — is measured response, lower response, — eg, not violating or nudity.

Contra Elgin.

- The soap gov. has erred on side of freedom of expression.

- Legis. debate — Purpose is clear.

- CA has seen some form of prior restraint is justified — it was ~~[illegible]~~ particular means [illegible]

How [illegible] you challenge past [illegible] ?

- Soap will be exemplar

// Videofield

- Soap is suf. + proof gov. objective
  - Local standard of morality
  - Fred. gov. can't control pays. + lw. rights
  - can't pre-screen films
  - What we're trying to do is regulate [illegible] pic. [illegible] from outside Canada

Objectives of Act

— Local standards of ~~women~~ morality —
this is most important

a + b) = prevention of crime

prot. of dignity of women —
is imp. + part of local standards
of morality.

International law — Recog.
that there can be limitations
in morality.

Rev. Wages — Concurrence
by Cheek's testimony that
are problems in "desensitization"

Doug Rankine

Real Hot Video — p. 22
"Real + sub. harm" case —
these videos dehumanize
women

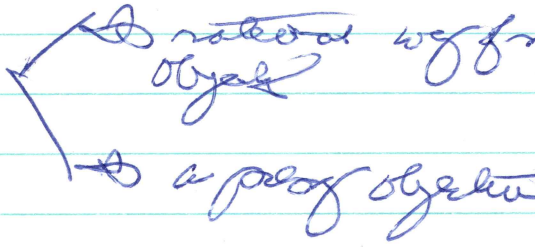
But these
were obscene.

This is
protected by
C.C.

* The erotic tends to
desensitize com. to family
marriage, etc. — if
you see promiscuity by
done you're 7 likely to
do it.

Mean

- "Gaps are frameen specifically, narrowly as possible" — are restrained
- Compare Australia almost no criteria
  - → rational way of meet objects
  - → a pressing objective



no thresh. Sanctions.

- Limited type of expression subject to restraint one of Slight social value — don't deserve protection

Tree.

- Sun tons V. U.K. 1979 (2) Eur. Hum Rts. Report 245, 271 "Prescribed by Law"
  - 1)
  - 2) Sufficient precision to enable citizen to regulate his conduct — must be able to see consequences which a given act would entail — but beware of rigidity

Info Relativity

- Criteria aren't vague — Interview party knows the criteria & knows how to get response.

- "Obvious objectives"

- Why are we dealing w/ it this way:
  - Dovetails with
  - Past practice
  - Classification system
  - w/ our conception of use of tests. — is just means of getting a determination
  - C.C. does not address "local standards" of conduct

- System is logical consequence given our particular system of gov.

- He says an actual crisis, production is much > intrusion on ~~society~~ than prior restraint → To individual not society.

- Policies is sorry — we don't really use law to fuel extent — does it matter.

- Cases he didn't attempt to interpret it.

12-83

1) Eden sequence Thur of Cen. – [illegible]
[illegible] [illegible] w KT WV.

2) Sounds + colour wings.
(trees, etc)

3) Atomic gardening. –
Nuclear weapons

4) Motel Row
– Images of destruction + ruin –
– urban + rural decay –
– tense motion [illegible]
– Buffet – intolerance –
"Lower Fig"

– Fineness

(1) Motel – Cemetery (well used for)
// the pyramids.
"Ideograms of ruin."
"Totem + Tabs" – ruin
"Fight ruin" – Buffet

(1) Bridge w Ele. Storm

(1) Motel
– Scenes w Ory along motel Row
– Voiceover from [illegible]

- Does sex/expression come w/in s. 2b?
  - What's purpose —
    near by [illegible] line [illegible] sex/pol. [illegible]
  - Am. analysis
  - "Purpose approach" — how
    you [illegible] apply this to [illegible]

- Sound scene [illegible] —
  [illegible] tactics
  - Pavlov [illegible] — "Attorney [illegible]" + [illegible]
  - Blurred [illegible]
  - Marshall v. Freedman — Marshall
    [illegible]
  - [illegible] sex w/in [illegible]
    which is a "[illegible]" [illegible]
    [illegible]?
    - Will [illegible] allow [illegible] [illegible] w/in [illegible]

- Opinion [illegible] — [illegible]
  [illegible] this is [illegible]
  [illegible]

- Preamp + sub. [illegible] interest? Thorn film
  [illegible].

- Oldest ... = ... = ...

- ... type of ... you ...
  + ... long ... and ...
- ... days ... in ... room.
- ... TV. ... in ... room.
- ... Vegas

Que: Does ... stay ... day ... - ...

- ... stays ... of ... room ... for ... TV.

DOA - 2nd. 2nd.

RII.

1) "The ... person ... and ... before ... appears ... female.

2) By ... how ... (... Costs ... of ... in US)

3) ... to Vegas.
   Some ... of ... rooms, ... view. ... is ... and ... tells ... visitors. Does ... pressure ... day - ... ends.

4) Bridge ..., ...

5) Drugs

- TV [illegible]
- Commercial voiceover
- Accident, [illegible] war.

} all on "screen" over city

Message from our sponsor

- Mahoney [illegible].
- Same show
- Single / Team.
- [illegible] to sell [illegible].
- [illegible] of [illegible] how [illegible], [illegible] "[illegible] be you?"
- [illegible] product.
- Subtlement message.
- Fellation + [illegible] [illegible] [illegible] —
- Repetition
- [illegible] — my [illegible] in [illegible] [illegible]
- "[illegible] all [illegible]" — [illegible] [illegible].

"Do not [illegible] who you
were in to - [illegible]

GRAND & TOY
L26-315-25